

May 19, 1995

HEALTH AND HUMAN SERVICES — C.S.H.B. 883, H.B. 1108, H.B. 1109, H.B. 1053, H.B. 1649, H.B. 76, H.B. 1362

FINANCE — H.J.R. 35, H.B. 3079 (Amended), H.B. 399, H.B. 2747, C.S.H.B. 735, C.S.H.B. 632

INTERGOVERNMENTAL RELATIONS — H.B. 943 (Amended), H.B. 2969 (Amended), H.B. 1361, H.B. 2345, H.B. 2034, H.B. 2980, H.B. 3143, H.B. 2873, H.B. 1844, H.B. 375, C.S.H.B. 3232, C.S.H.B. 52, C.S.H.B. 1541, C.S.H.B. 2758

SEVENTY-SIXTH DAY

(Monday, May 22, 1995)

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

A quorum was announced present.

The Right Reverend Maurice M. Benitez of Austin, retired Bishop, Episcopal Diocese of Texas, offered the invocation as follows:

Almighty God, our heavenly Father, bless each of the Senators who gather here, along with the members of their support staffs, in the work that is before them this day. Have mercy upon them in the difficult decisions that they must make, and give them the courage to seek the harder right rather than the easier wrong.

Lord God, enable them to prefer losing today in a cause that is right and which will ultimately prevail, than to win today in a cause that is wrong, and which will eventually fail.

Finally, give to them Your spirit throughout this day that they may see themselves here, not only to serve the good of the people of Texas, but most of all, Lord God, to see themselves here as Your servants, seeking to make this a finer, a more loving, a more righteous, a better world.

In the name of Him who is the Way, and the Truth, and the Life. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of Friday, May 19, 1995, was dispensed with and the Journal was approved.

CO-SPONSOR OF HOUSE BILL 40

On motion of Senator Armbrister and by unanimous consent, Senator Madla will be shown as Co-sponsor of **H.B. 40**.

MESSAGE FROM THE HOUSE

House Chamber
May 22, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House has concurred in Senate amendments to **H.B. 160** by a record vote of 121 Ayes, 0 Nays, 2 Present-not voting.

The House has concurred in Senate amendments to **H.B. 668** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 3122** by a record vote of 124 Ayes, 0 Nays, 2 Present-not voting.

The House has concurred in Senate amendments to **H.B. 869** by a record vote of 75 Ayes, 49 Nays, 2 Present-not voting.

The House has concurred in Senate amendments to **H.B. 699** by a record vote of 119 Ayes, 1 Nay, 2 Present-not voting.

The House has concurred in Senate amendments to **H.B. 2078** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1583** by a record vote of 123 Ayes, 0 Nays, 2 Present-not voting.

The House has concurred in Senate amendments to **H.B. 1341** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1111** by a non-record vote.

The House refused to concur in Senate amendments to **H.B. 2349** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Kuempel, Chair; R. Lewis, Saunders, Walker, Yost.

The House has adopted the Conference Committee Report on **H.J.R. 50** with a vote of 123 Ayes, 0 Nays, 2 Present-not voting.

The House has adopted the Conference Committee Report on **H.B. 1343** with a vote of 123 Ayes, 0 Nays, 2 Present-not voting.

The House has adopted the Conference Committee Report on **H.B. 686** with a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 753** with a vote of 124 Ayes, 0 Nays, 2 Present-not voting.

S.B. 124, Relating to notification of a victim of the offense of stalking about the release on bail of the defendant in the case. (As amended)

S.B. 126, Relating to the requirement that a victim of the offense of stalking must have previously reported the stalking conduct; providing penalties. (As amended)

S.B. 129, Relating to magistrate's orders for emergency protection for victims of family violence or the offense of stalking and to the offense of violation of a protective order or magistrate's order for emergency protection. (As amended)

S.B. 130, Relating to creating the offense of transferring a handgun to a person who is the subject of a protective order and including in the law enforcement information system maintained by the Department of Public Safety information relating to protective orders.

S.B. 133, Relating to distribution of and fees charged by health care providers or health care facilities for certain medical or mental health records. (As substituted)

S.B. 182, Relating to prohibiting discrimination by certain insurers in issuing health insurance policies to women with fibrocystic breast conditions; imposing penalties. (As amended)

S.B. 219, Relating to community assistance and economic development program activities of certain river authorities; validating certain actions and instruments of the river authorities.

S.B. 212, Relating to exempting certain youth programs from child-care licensing requirements. (As amended)

S.B. 261, Relating to certain charges in connection with a fine for violation of a motor vehicle law. (As amended)

S.B. 283, Relating to the authority of certain prosecuting attorneys to apply for a protective order. (As substituted and amended)

S.B. 291, Relating to voluntary adoption registries. (As substituted)

S.B. 338, Relating to the termination of the parent-child relationship. (As substituted)

S.B. 351, Relating to clarifying procedures for the removal of organs or tissues from decedents when an inquest is required. (As amended)

S.B. 413, Relating to workers' compensation insurance coverage for volunteer emergency service members and personnel. (As amended)

S.B. 428, Relating to the exemption from ad valorem taxation of property owned by certain charitable organizations. (As amended)

S.B. 440, Relating to procedures for applying for a writ of habeas corpus by persons convicted of a felony and procedures for the

compensation and appointment of counsel to represent certain persons charged with a capital felony. (As substituted and amended)

S.B. 472, Relating to the waiver of the visual standards for a commercial driver's license to operate a commercial motor vehicle only in this state. (As amended)

S.B. 488, Relating to a contractual lien for surveying or engineering services. (As amended)

S.B. 512, Relating to payment for a statement of facts in a suit affecting the parent-child relationship. (As substituted and amended)

S.B. 533, Relating to a principal who uses a sales representative. (As substituted and amended)

S.B. 572, Relating to court-ordered mental health services. (As amended)

S.B. 597, Relating to mandatory reinstatement of certain life insurance policies in case of mental incapacity of an insured. (As amended)

S.B. 627, Relating to authorizing the Texas State Library and Archives Commission to negotiate an agreement with the appropriate authorities in Mexico for the exchange of certain Alamo and San Jacinto battle flags.

S.B. 646, Relating to the appointment or employment of veterans and certain relatives of veterans by public entities. (As substituted)

S.B. 651, Relating to an exemption from the requirement to obtain a water use permit for certain reservoirs used in surface coal mining operations.

S.B. 661, Relating to transaction fees for the use of an electronic terminal connected to a shared electronic network.

S.B. 744, Relating to guaranteed energy savings projects for local governments. (As amended)

S.B. 904, Relating to the eligibility of certain fire and police departments to participate in the Texas Municipal Retirement System. (As substituted and amended)

S.B. 914, Relating to disciplinary procedures for commissioned peace officers and other employees of the Texas Alcoholic Beverage Commission. (As substituted)

S.B. 921, Relating to the regulation of certain persons engaged in the business of motor vehicle leasing.

S.B. 992, Relating to the disapproval of a subdivision by a municipality. (As amended)

S.B. 1017, Relating to the designation of water quality protection zones in certain areas. (As substituted and amended)

S.B. 1059, Relating to the training of licensed or certified individuals providing services to geriatric residents as employees or volunteers of certain facilities. (As amended)

S.B. 1261, Relating to the annexation of and the provision of services to certain districts by cities and the assessment of surcharges on the dissolution of those districts. (As amended)

S.B. 1357, Relating to surface commingling of production of oil or gas or oil and gas. (As amended)

S.B. 1365, Relating to prepaid legal services contracts. (As amended)

S.B. 1371, Relating to the authority of certain political subdivisions to contract for solid waste services. (As amended)

S.B. 1384, Relating to the recusal of judges on the supreme court.

S.B. 1445, Relating to transfer of title to a motor vehicle, procurement of a copy of a motor vehicle certificate of title, the collection and administration of the motor vehicle sales tax, and certain disclosures that must be made to the purchaser of a motor vehicle. (As amended)

S.B. 1446, Relating to the regulation of certain motor vehicle dealers and to the sale, titling, and registration of certain motor vehicles.

S.B. 1542, Relating to the regulation of private investigators and private security agencies; creating a criminal penalty. (As substituted and amended)

S.B. 1654, Relating to the exemption from ad valorem taxation of real property owned by certain organizations chartered by the Congress of the Republic of Texas.

S.J.R. 1, Proposing a constitutional amendment abolishing the office of state treasurer. (As substituted and amended)

S.C.R. 27, Directing that the present State Treasury Building be named the Thomas Jefferson Rusk State Office Building.

S.C.R. 87, Memorializing the Congress of the United States to increase federal funding for research relating to chronic fatigue syndrome.

S.C.R. 88, Expressing support for the study and evaluation of an integrated treatment approach for persons with a co-occurring substance addiction and mental illness.

H.C.R. 129, Directing the Texas Department of Mental Health and Mental Retardation to conduct a feasibility study to ascertain the costs for constructing and/or renovating buildings on the campus of the San Antonio State Chest Hospital and San Antonio State School.

H.C.R. 168, Renaming the Terrell State Hospital Family Center the Martha Allen Family Center.

H.B. 3237, Relating to the creation of municipal courts of record in Lake Worth.

S.B. 3, Relating to the regulation of motor carriers; providing civil, administrative, and criminal penalties. (As substituted and amended)

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

SENATE RESOLUTION 1143

Senator Truan offered the following resolution:

S.R. 1143, Welcoming Heinrich Neisser, Deputy Speaker of the Austrian Parliament, to the Texas Senate.

The resolution was read.

On motion of Senator Leedom and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Truan, the resolution was adopted by a rising vote of the Senate.

GUEST PRESENTED

Senator Truan was recognized and introduced to the Senate Deputy Speaker of the Austrian Parliament, Heinrich Neisser.

The Senate welcomed its distinguished guest.

(Senator Leedom in Chair)

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was referred to the Committee on Nominations:

Austin, Texas
May 22, 1995

TO THE SENATE OF THE SEVENTY-FOURTH LEGISLATURE,
REGULAR SESSION:

On January 19, 1995, I submitted the names of Commissioner Ed Stuart of Friendswood and Mr. Joseph T. Surovik of Port Lavaca for appointment to the Coastal Coordination Council for terms to expire January 27, 1996.

I hereby withdraw these nominations and request that the Senate return the appointments to me.

Respectfully submitted,

/s/George W. Bush
Governor of Texas

(President in Chair)

BILLS AND RESOLUTIONS SIGNED

The President announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

S.C.R. 58	S.B. 329	S.B. 741	S.B. 1062
S.C.R. 142	S.B. 378	S.B. 775	S.B. 1084
S.C.R. 143	S.B. 406	S.B. 794	S.B. 1129
S.C.R. 144	S.B. 443	S.B. 888	S.B. 1136
S.C.R. 145	S.B. 478	S.B. 892	S.B. 1162
S.C.R. 151	S.B. 489	S.B. 935	S.B. 1173
S.B. 49	S.B. 513	S.B. 942	S.B. 1280
S.B. 96	S.B. 544	S.B. 955	S.B. 1438
S.B. 118	S.B. 570	S.B. 981	S.B. 1512
S.B. 161	S.B. 598	S.B. 982	S.B. 1515
S.B. 209	S.B. 645	S.B. 983	S.B. 1551
S.B. 221	S.B. 691	S.B. 993	S.B. 1604
S.B. 240	S.B. 702	S.B. 1015	S.B. 1622
S.B. 255	S.B. 714	S.B. 1038	S.B. 1628
S.B. 267	S.B. 737	S.B. 1061	S.B. 149
S.B. 1379 (Signed subject to Art. III Sec. 49a of the Constitution)			

SENATE BILL 1262 WITH HOUSE AMENDMENT

Senator Montford called **S.B. 1262** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend the House committee report for **S.B. 1262** as follows:

(1) Strike the phrase "or Legislative Budget Board" wherever it appears in the bill.

(2) Strike the phrase "and Legislative Budget Board" wherever it appears in the bill, except in SECTION 7 of the bill.

(3) On page 5 strike the language after the period on line 17 through the underlined language on line 24.

(4) On page 4, line 1 strike proposed subsection (3) and insert in lieu thereof the following:

"(3) notwithstanding subsections (1) and (2), a otherwise directed pursuant to the procedures of Chapter 317, Government Code."

The amendment was read.

On motion of Senator Montford and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1262** by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1792 ADOPTED**

Senator Bivins called from the President's table the Conference Committee Report on **H.B. 1792**. The Conference Committee Report was filed with the Senate on Friday, May 19, 1995.

On motion of Senator Bivins, the Conference Committee Report was adopted by a viva voce vote.

SENATE BILL 1513 WITH HOUSE AMENDMENT

Senator Cain called **S.B. 1513** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend SECTION 1 of **S.B. 1513** as follows:

- (1) On page 1, strike lines 13-15 and substitute "(1) ~~a {(a)A}~~ clearly visible railroad ~~[electric or mechanical]~~ signal warns ~~[device giving warning]~~ of the ~~[immediate]~~ approach of a railroad train;"
- (2) On page 1, line 22, after the semicolon, add "or";
- (3) On page 2, line 1, strike "~~(E) a railroad sign or signal; or~~".
- (4) On page 2, line 5, strike "or"

The amendment was read.

Senator Cain moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **S.B. 1513** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Cain, Chair; Henderson, Armbrister, West, and Gallegos.

SENATE BILL 905 WITH HOUSE AMENDMENTS

Senator Ellis called **S.B. 905** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1

Amend **S.B. 905** in the following manner:

1. On page 4, line 2 add the following at the end of subsection (1) immediately before the period: "or a volume of gas with a minimum

heating value of 6,000,000 British thermal units (6,000 Mbtu), whichever is greater."

2. On page 4, line 19, add the following as the last sentence in subsection (b): "In determining whether to grant a reduction in the royalty rate, the board may consider whether the qualifying property is being operated efficiently, including whether the property is pooled or has reasonable potential for the application of secondary or tertiary recovery techniques."

Amendment No. 2

Amend **S.B. 905** as follows:

On page 2, line 19, by inserting between (6.25 percent) and the period for a term not to exceed two (2) years unless extended at the reduced rate for additional periods not to exceed two (2) years on approval by the board

On page 3, line 2, by inserting between (3.125 percent) and the period for a term not to exceed two (2) years unless extended at the reduced rate for additional periods not to exceed two (2) years on approval by the board.

The amendments were read.

Senator Ellis moved to concur in the House amendments to **S.B. 905**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

GUEST PRESENTED

Senator Haywood was recognized and introduced to the Senate his grandson, Jeffrey Green.

The Senate welcomed its guest.

CAPITOL PHYSICIAN

Senator Bivins, on behalf of Senator Ratliff, was recognized and presented Dr. Max Latham of Sulphur Springs as the "Doctor for the Day."

The Senate welcomed Dr. Latham and thanked him for his participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

SENATE BILL 407 WITH HOUSE AMENDMENT

Senator Montford called **S.B. 407** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **S.B. 407** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to making emergency appropriations for distribution of state money to school districts and certain public institutions and commissions and to

emergency reductions in the current appropriations to the Texas Department of Health.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. (a) On determination pursuant to Subsection (i), Section 16.254, Education Code, of the actual amount of state funds to which each school district is entitled for the 1994-1995 school year and the amount of adjustment of each district's entitlement for the next fiscal year, those districts whose adjustment would result in an increase for the next fiscal year may receive payment of all or, on a pro rata basis, part of that increase during the current fiscal year, to the extent that appropriations provided by this section allow.

(b) To the extent that appropriations provided by this section exceed the total of increased entitlements determined pursuant to Subsection (i), Section 16.254, Education Code, and payable during the current fiscal year pursuant to Subsection (a) of this section, the remainder shall be paid to all school districts on a pro rata basis on or before July 25, 1995, as an advance on payments otherwise due on or before September 25, 1995.

(c) The sum of \$305 million is appropriated from the general revenue fund to the Central Education Agency for the payments authorized by this section for the current fiscal year.

SECTION 2. (a) In addition to amounts previously appropriated for the current fiscal biennium, the sum of \$13,744,133 is appropriated from the general revenue fund to the Texas Higher Education Coordinating Board for the remainder of the fiscal year ending August 31, 1995, to fund enrollment and start-up costs at new campuses at Collin County Community College, North Harris Montgomery Community College, Blinn College, and Tarrant County Junior College.

(b) Unexpended and unencumbered balances of the amount appropriated by this section remaining at the end of fiscal year 1995 are reappropriated for the same purposes for the fiscal biennium ending August 31, 1997.

SECTION 3. In addition to amounts previously appropriated for the current fiscal biennium, the sum of \$2,312,050 is appropriated from the general revenue fund to the Texas Higher Education Coordinating Board for the remainder of the fiscal year ending August 31, 1995, to fund infrastructure development, student support services, the physical plant, and instructional costs at South Texas Community College.

SECTION 4. (a) The appropriations out of the general revenue fund to the Texas Department of Health are reduced for the fiscal year ending August 31, 1995, in the aggregate amount of \$8,250,000. The department shall identify the strategies and objectives out of which the reductions are made.

(b) Out of that amount:

(1) the comptroller shall transfer to the Disaster Contingency Account No. 453 in the general revenue fund the sum of \$4,000,000, and that amount in addition to amounts previously appropriated for the current

fiscal biennium is appropriated for the remainder of the fiscal year ending August 31, 1995, to the governor for the purposes described by Section 418.073, Government Code;

(2) in addition to amounts previously appropriated for the current fiscal biennium there is appropriated for the remainder of the fiscal year ending August 31, 1995, to the Texas Youth Commission the sum of \$4,000,000 for the purpose of paying for the confinement and care of juvenile offenders committed to the custody of the commission, except that the commission may not expend more than \$2,300,000 of that amount without the prior written approval of the governor given after the governor has sought the advice of the Legislative Budget Board; and

(3) in addition to amounts previously appropriated for the current fiscal biennium there is appropriated for the remainder of the fiscal year ending August 31, 1995, to the Department of Public Safety the sum of \$250,000 for the purpose of paying for expenses associated with the commission's investigation of matters related to the Texas Commission on Alcohol and Drug Abuse, with any unencumbered and unexpended balances of that amount remaining at the end of the fiscal year ending August 31, 1995, being reappropriated to the Department of Public Safety for the same purposes for the fiscal biennium ending August 31, 1997.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Montford moved to concur in the House amendment to **S.B. 407**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

Senator Montford offered the following resolutions:

SENATE RESOLUTION 897

S.R. 897, Congratulating Joseph "Joe" Pickle of Big Spring on the occasion of his retirement from the Colorado River Municipal Water District.

The resolution was again read.

SENATE RESOLUTION 898

S.R. 898, Congratulating Clyde McMahon, Sr., of Big Spring on the occasion of his retirement from the Colorado River Municipal Water District.

The resolution was again read.

SENATE RESOLUTION 899

S.R. 899, Congratulating John L. Taylor of Big Spring on the occasion of his retirement from the Colorado River Municipal Water District.

The resolution was again read.

SENATE RESOLUTION 900

S.R. 900, Congratulating Owen H. Ivie of Big Spring on the occasion of his retirement from the Colorado River Municipal Water District.

The resolution was again read.

The resolutions were previously adopted on Wednesday, May 3, 1995.

GUESTS PRESENTED

Senator Montford was recognized and introduced to the Senate Joseph "Joe" Pickle, Clyde McMahon, Sr., John L. Taylor, Owen H. Ivie, and other members of the Colorado River Municipal Water District.

The Senate welcomed its guests and congratulated them on their retirement.

GUESTS PRESENTED

Senator Sims was recognized and introduced to the Senate his grandson, Jacob Sims, and granddaughter, Meredith Sims.

The Senate welcomed its guests.

(Senator Leedom in Chair)

BILLS AND RESOLUTIONS SIGNED

The Presiding Officer announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

H.B. 27	H.B. 1343	H.B. 2587
H.B. 384	H.B. 1543	H.B. 2599
H.B. 668	H.B. 1583	H.B. 2624
H.B. 670	H.B. 1989	H.B. 2674
H.B. 686	H.B. 2015	H.B. 3122
H.B. 699	H.B. 2078	H.B. 3226
H.B. 869	H.B. 2151	H.C.R. 32
H.B. 949	H.B. 2245	H.C.R. 174
H.B. 1111	H.B. 2278	H.J.R. 50
H.B. 1341	H.B. 2459	

(President in Chair)

GUESTS PRESENTED

Senator Nixon was recognized and introduced to the Senate a delegation from Jasper County.

The Senate welcomed its guests.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 9 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **S.B. 9**. The Conference Committee Report was filed with the Senate on Thursday, May 18, 1995.

On motion of Senator Armbrister, the Conference Committee Report was adopted by a viva voce vote.

SENATE BILL 1063 WITH HOUSE AMENDMENTS

Senator Armbrister called **S.B. 1063** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1

Amend **S.B. 1063** as follows:

- 1). Amend Section 2 by deleting quoted Section 22.17 in its entirety.
- 2). Amend Section 2 by adding the following new subsection (f) at the end of quoted Section 22.16:

(f) This section shall not apply to a corporation:

(1) which was a public corporation as defined by this section on April 28, 1995; and

(2) which holds a package store permit on April 28, 1995 or which has an application pending for a package store permit on April 28, 1995; and

(3) which has provided to the commission on or before December 31, 1995, a sworn affidavit stating that such corporation satisfies the previous two requirements of this subsection.

Amendment No. 2

Amend **S.B. 1063**, SECTION 2 as follows:

On page 1, line 17-18, strike subsection (c) and substitute the following:

"(c) This section shall not apply to a person who is employed by their parent or legal guardian to work in a package store that is owned by the parent or legal guardian.

Amendment No. 3

Amend **S.B. 1063** by adding the following new section to the bill to be numbered appropriately to read as follows:

SECTION ____ . Amend Chapter 22, Alcoholic Beverage Code, by adding the following new Sections 22.75 and 22.76 to read as follows:

Sec. 22.75. RENEWAL OF PERMIT BY DESCENDANT OR SURVIVING SPOUSE. If the surviving spouse or surviving descendant of a holder of a package store permit or any other license or permit held by the holder of a package store permit qualifies as the successor in interest

to the permit license as provided in Section 11.10 of this code, the descendant, devisee or surviving spouse may continue to renew the permit by paying a renewal fee equal to the fee the permittee would be required to pay had he lived.

Sec. 22.76. APPLICATION OF CERTAIN REQUIREMENTS. If at the time an original package store permit or any other license or permit issued to the holder of a package store permit is granted for a premises the premises satisfies the requirements regarding distance from schools, churches, hospitals and other types of premises established or authorized in this code and any other law or ordinance of the state or a political subdivision of the state in effect at that time, the premises shall be deemed to satisfy the distance requirements for all subsequent renewals of the permit or license. On the sale or transfer of the premises or the business on the premises in which a new original license or permit is required for the premises, the premises shall be deemed to satisfy any distance requirements as if the issuance of the new original permit or license were a renewal of a previously held permit or license.

Amendment No. 1 on Third Reading

Amend **S.B. 1063** on third reading by striking 2nd reading Amendment No. 3 by Seidlits.

The amendments were read.

On motion of Senator Armbrister and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1063** by a viva voce vote.

CONCLUSION OF MORNING CALL

The President at 10:58 a.m. announced the conclusion of morning call.

HOUSE BILL 2390 ON SECOND READING

On motion of Senator Turner and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2390, Relating to the abolishment of the Texas High-Speed Rail Authority.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2390 ON THIRD READING

Senator Turner moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2390** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 1956 ON SECOND READING

On motion of Senator Nixon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1956, Relating to eliminating certain mandated reports prepared by the Texas Parks and Wildlife Commission or the Texas Parks and Wildlife Department.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1956 ON THIRD READING

Senator Nixon moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1956** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

(Senator Bivins in Chair)

HOUSE BILL 2012 ON SECOND READING

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2012, Relating to the disclosure of certain information collected by the Parks and Wildlife Department.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2012 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2012** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 29 ON SECOND READING

On motion of Senator Leedom and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 29, Relating to tuition-free higher education of senior citizens.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Leedom asked to be recorded as "Present-not voting" on the passage of the bill to third reading.

HOUSE BILL 29 ON THIRD READING

Senator Leedom moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 29** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Leedom.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

(President in Chair)

COMMITTEE SUBSTITUTE**HOUSE BILL 398 ON SECOND READING**

Senator Lucio moved to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 398, Relating to the eligibility of certain high-cost gas for a reduction of the gas production tax.

The motion prevailed by the following vote: Yeas 25, Nays 1, Present-not voting 3.

Yeas: Barrientos, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Truan.

Present-not voting: Bivins, Moncrief, Montford.

Absent: Armbrister, Luna.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORDS OF VOTES

Senator Truan asked to be recorded as voting "Nay" on the passage of the bill to third reading.

Senators Bivins, Moncrief, and Montford asked to be recorded as "Present-not voting" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE**HOUSE BILL 398 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 398** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 1, Present-not voting 3.

Yeas: Barrientos, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Truan.

Present-not voting: Bivins, Moncrief, Montford.

Absent: Armbrister, Luna.

The bill was read third time and was passed by a viva voce vote.

RECORDS OF VOTES

Senator Truan asked to be recorded as voting "Nay" on the final passage of the bill.

Senators Bivins, Moncrief, and Montford asked to be recorded as "Present-not voting" on the final passage of the bill.

AT EASE

The President at 11:23 a.m. announced the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

The President at 12:14 p.m. called the Senate to order as In Legislative Session.

HOUSE BILL 2890 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2890, Relating to the management of the Edwards Aquifer.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 2890** (House engrossment) as follows:

(1) Strike Section 2 of the bill (page 1, line 9 through page 2, line 12) and renumber subsequent Sections of the bill appropriately.

(2) In Section 4 of the bill, in the first sentence of Section 1.16(b) (page 3, line 15), strike "1996" and substitute "1997".

(3) In Section 5 of the bill, Section 1.17(a)(2) (page 4, line 4), strike "1996" and substitute "1997".

(4) In Section 5 of the bill, Section 1.17(d)(2) (page 4, line 11), strike "1996" and substitute "1997".

(5) In Section 6 of the bill, Section 1.18(b) (page 4, line 20), strike "1996" and substitute "1997".

(6) In Section 7 of the bill, Section 1.25(a) (page 4, line 24), strike "1997" and substitute "1998".

(7) In Section 10 of the bill, Section 1.31(b) (page 6, lines 6 and 7), strike "September 1, 1995 [~~1993~~]" and substitute "June 1, 1995 [~~September 1, 1993~~]".

(8) In Section 12 of the bill, Section 3.04 (page 6, line 19), strike "1997" and substitute "1998".

The committee amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 2890**, as follows:

In Section 8 of the bill, Section 1.26 (page 3, line 1), strike "September 1, 1997" and substitute "March 1, 1996".

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2890 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2890** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

GUEST PRESENTED

The President introduced to the Senate former Senator Steve Carriker of Roby.

The Senate welcomed its guest.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3189 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 3189, Relating to the board of directors of the Edwards Aquifer Authority and the management of the Edwards Aquifer.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 3189** in Section 1 of the bill as follows:

(1) In proposed Subsection (b), Section 1.09 (Senate committee report, page 1, line 28) strike "~~odd-numbered~~" and substitute "even-numbered".

(2) Strike proposed Subdivisions (1)-(15), Subsection (a), Section 1.092 (Senate committee report, page 2, line 64 through page 3, line 8) and substitute the following:

- "(1) Mr. Phil Barshop;
- (2) Mr. Ralph Zendejas;
- (3) Mr. Mike Beldon;
- (4) Ms. Rosa Maria Gonzales;
- (5) Mr. John Sanders;
- (6) Ms. Sylvia Ruiz Mendelsohn;
- (7) Mr. Joe Bernal;
- (8) Mr. Oliver R. Martin;
- (9) Mr. A. O. Gilliam;
- (10) Mr. Bruce Gilleland;
- (11) Mr. Rogelio Munoz;
- (12) Mr. Doug Miller;
- (13) Ms. Paula DiFonzo;
- (14) Mr. Mack Martinez;
- (15) Ms. Jane Houghson;".

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 3189** (Senate committee report) in Section 1 of the bill by adding a new Subsection (h) to proposed Section 1.092 (on page 3, between lines 42 and 43) to read as follows:

"(h) The temporary board has all of the authority granted to the permanent board by this article and by general law."

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 3

Amend **C.S.H.B. 3189** (Senate committee report) in Section 1 of the bill as follows:

(1) Strike proposed Subsection (c), Section 1.091 (page 2, lines 36-39) and substitute the following:

"(c) One nonvoting director shall be appointed by the Commissioners Court of Medina County or Uvalde County as provided by this subsection. A nonvoting director appointed by the Commissioners Court of Medina County must be a resident of Medina County, and a nonvoting director appointed by the Commissioners Court of Uvalde County must be a resident of Uvalde County. The Commissioners Court of Medina County shall appoint the nonvoting director for the term beginning December 1, 1996, and the Commissioners Court of Uvalde County shall appoint the nonvoting director for the term beginning December 1, 2000. Subsequent directors shall be appointed under this subsection by the Commissioners Courts of Medina County and Uvalde County in alternation."

(2) Strike proposed Subdivision (17), Subsection (a), Section 1.092 (page 3, lines 12-14), and substitute the following:

"(17) one temporary director appointed jointly by the Commissioners Courts of Medina County and Uvalde County who must be a resident of one of those counties."

(3) Strike proposed Subsection (b), Section 1.092 (page 3, lines 15-17), and substitute the following:

"(b) A temporary director appointed by the South Central Texas Water Advisory Committee or by the Commissioners Courts of Medina County and Uvalde County is a nonvoting member of the temporary board. The temporary director appointed by the South Central Texas Water Advisory Committee serves until the first nonvoting director appointed under Section 1.091(b) takes office. The temporary director appointed by the Commissioners Courts of Medina County and Uvalde County serves until the first nonvoting director appointed under Section 1.091(c) of this article takes office."

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 4

Amend **C.S.H.B. 3189** (Senate committee report) in Section 2 of the bill, the last sentence of Subsection (f), Section 1.10 (page 13, line 51), between "action" and the bracket, by inserting the following:

"If the commission recommends that the board modify or withdraw an action and the board fails to modify or withdraw the action as recommended, the advisory committee may bring an action in district court to compel the board to act in conformance with the commission's recommendation".

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 5

Amend **C.S.H.B. 3189** in Section 1 of the bill by striking Subsection (f) of proposed Section 1.092 (Senate committee report, page 2, lines 56-59) and substituting the following:

"(f) A temporary director receives no compensation for service on the board but is entitled to reimbursement for actual and necessary expenses incurred in the performance of the director's duties."

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 6

Amend **C.S.H.B. 3189** (Senate committee report) by adding Sections 3-11 of the bill to read as follows and by renumbering Section 3 of the bill appropriately:

SECTION 3. Section 1.13, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

Sec. 1.13. REUSE AUTHORIZED. Any regulation of the withdrawal of water from the aquifer must allow for credit to be given for certified reuse of the water. For regulatory credit, the authority or a local underground water conservation district or other underground water district must certify:

- (1) the lawful use and reuse of aquifer water;
- (2) the amount of aquifer water to be used; and
- (3) the amount of aquifer withdrawals replaced by reuse.

SECTION 4. Section 1.25(b), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(b) The authority, in conjunction with the South Central Texas Water Advisory Committee, the Texas Water Development Board, and underground water conservation districts and other underground water districts within the authority's boundaries, shall develop a 20-year plan for providing alternative supplies of water to the region, with five-year goals and objectives, to be implemented by the authority and reviewed annually by the appropriate state agencies and the Edwards Aquifer Legislative Oversight Committee. The authority, advisory committee, Texas Water Development Board, and districts, in developing the plan, shall:

- (1) thoroughly investigate all alternative technologies;
- (2) investigate mechanisms for providing financial assistance for alternative supplies through the Texas Water Development Board; and
- (3) perform a cost-benefit analysis and an environmental analysis.

SECTION 5. Section 1.29(b), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(b) The authority shall assess equitable aquifer management fees based on aquifer use under the water management plan to finance its administrative expenses and programs authorized under this article. Each water district governed by Chapter 52, Water Code, or other underground water district that is within the authority's boundaries may contract with the authority to pay expenses of the authority through taxes in lieu of user fees to be paid by water users in the district. The contract must provide that the district will pay an amount equal to the amount that the water users in the district would have paid through user fees. The authority may not collect a total amount of fees and taxes that is more than is reasonably necessary for the administration of the authority.

SECTION 6. Section 1.33(b), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(b) Exempt wells must register with the authority, ~~[or with]~~ an underground water conservation district in which the well is located, or an underground water district in which the well is located.

SECTION 7. Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Section 1.411 to read as follows:

Sec. 1.411. TRANSFER OF EDWARDS UNDERGROUND WATER DISTRICT FUNDS. The board of directors of the Edwards Underground Water District shall transfer to the authority \$2.5 million from the district's

funds before the 31st day after the date the temporary board of directors of the authority is authorized to act for the authority.

SECTION 8. Sections 1.42(a)-(c), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, are amended to read as follows:

(a) An underground water conservation district or other underground water district other than the authority may manage and control water that is a part of the aquifer after the effective date of this article only as provided in this section. This article does not affect a water reclamation or conservation district that manages and controls only water from a resource other than the aquifer.

(b) An underground water conservation district or other underground water district other than the authority may manage and control water that is a part of the aquifer to the extent that those management activities do not conflict with and are not duplicative of this article or the rules and orders of the authority. An underground water conservation district or other underground water district shall comply with the rules and orders of the authority.

(c) Except as otherwise provided by this article, the board may delegate the powers and duties granted to it under this article. The board shall delegate all or part of its powers or duties to an underground water conservation district or other underground water district on the district's request if the district demonstrates to the satisfaction of the board that:

(1) the district has statutory powers necessary for full enforcement of the rules and orders to be delegated;

(2) the district has implemented all rules and policies necessary to fully implement the programs to be delegated; and

(3) the district has implemented a system designed to provide the authority with adequate information with which to monitor the adequacy of the district's performance in enforcing board rules and orders.

SECTION 9. Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Section 1.425 to read as follows:

Sec. 1.425. EDWARDS UNDERGROUND WATER DISTRICT OVERSIGHT AND COOPERATION. (a) The Edwards Underground Water District shall obtain the approval of the board of the authority before the district:

(1) participates in litigation challenging this Act, the authority, or an action of the authority;

(2) incurs new debt;

(3) disposes of or acquires real estate;

(4) makes an expenditure of greater than \$50,000 to a single payee or for any single program or project;

(5) incurs an obligation of greater than \$50,000; or

(6) enters into a contract the term of which extends beyond the date the district is scheduled to expire under Section 2A, Chapter 99, Acts of the 56th Legislature, Regular Session, 1959 (Article 8280-219, Vernon's Texas Civil Statutes).

(b) This section does not prohibit the Edwards Underground Water District from continuing to conduct district operations at the level the

operations are conducted on the effective date of this section or from expanding the district's operations as is reasonably necessary and consistent with good business practices.

(c) The Edwards Underground Water District, at the district's expense, shall cooperate with the authority and the South Central Texas Water Advisory Committee in carrying out both of the entities' responsibilities under this article until each entity has the staff necessary to operate independently. The district shall provide the authority and the advisory committee, without charge, office space, meeting space, and equipment until each entity acquires office space, meeting space, and equipment.

SECTION 10. Chapter 99, Acts of the 56th Legislature, Regular Session, 1959 (Article 8280-219, Vernon's Texas Civil Statutes), is amended by adding Section 2A to read as follows:

Sec. 2A. SUNSET REVIEW. (a) The District is subject to review under Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the District is abolished and this Act expires on September 1, 1997.

(b) Notwithstanding Subsection (a) of this section, if Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, takes effect during the period for Sunset Advisory Commission review of the District as prescribed by Subsection (a) of this section:

(1) the period for the review is the first period for review under Chapter 325, Government Code (Texas Sunset Act), that follows the date on which Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, takes effect; and

(2) unless continued in effect as provided by Chapter 325, Government Code (Texas Sunset Act), the District is abolished and this Act expires on September 1 of the odd-numbered year of the review cycle.

SECTION 11. (a) Section 1.41, Chapter 626, Acts of the 73rd Legislature, 1993, is repealed.

(b) Chapter 99, Acts of the 56th Legislature, Regular Session, 1959 (Article 8280-219, Vernon's Texas Civil Statutes), is not repealed by operation of Section 1.41, Chapter 626, Acts of the 73rd Legislature, 1993, and remains in effect as if that section had not been enacted.

(c) Except as provided by this Act, any provision of **H.B. 2890**, 74th Legislature, Regular Session, 1995, or of any other Act of the 74th Legislature that purports to amend or reenact any part of Section 1.41, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, or that purports to transfer unobligated or unexpended funds of the Edwards Underground Water District to the Edwards Aquifer Authority has no effect, regardless of the relative dates on which the provisions are enacted or would otherwise become law.

The amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 7

Amend **C.S.H.B. 3189**, Section 1.26, page 32, line 12, by adding new Section 4 as follows:

SECTION 4. Section 1.26, Chapter 626, Acts of the 73rd Legislature, 1993, is amended to read as follows:

Sec. 1.26. CRITICAL PERIOD MANAGEMENT PLAN. The authority shall prepare and coordinate implementation of a plan for critical period management on or before December 1, 1997 [~~September 1, 1995~~]. The mechanisms must:

- (1) distinguish between discretionary use and nondiscretionary use;
- (2) require reductions of all discretionary use to the maximum extent feasible;
- (3) require utility pricing, to the maximum extent feasible, to limit discretionary use by the customers of water utilities;
- (4) provide for exemptions for nondiscretionary use for United States Department of Defense missions;
- (5) [(4)] require reductions [~~reduction~~] of nondiscretionary use other than exempt use by permitted or contractual users, to the extent further reductions are necessary, provided that the amount of such reductions that would have been required to be made by United States Department of Defense missions except for the exemption in subsection (4) of this section shall be apportioned among and required to be made by the nonexempt permitted or contractual users in Bexar County; [such reductions shall be in the reverse order of the following water use preferences;] and
- (6) require that the reductions under subsection (5) shall be in the reverse order of the following water use preferences:
 - (A) municipal, domestic, and livestock;
 - (B) industrial and crop irrigation;
 - (C) recreational and pleasure; and
 - (E) other uses that are authorized by law.

The amendment was read.

Senator Madla offered the following amendment to Floor Amendment No. 7:

Floor Amendment No. 7A

Amend Floor Amendment No. 7 to C.S.H.B. 3189 by striking Sec. 1.26(6) in its entirety and substituting the following:

- (6) require that the reductions under subsection (5) shall be in the reverse order of the following water use preferences:
 - (A) municipal, domestic, crop irrigation, and livestock;
 - (B) industrial [~~and crop irrigation~~];
 - (C) recreational and pleasure; and
 - (D) other uses that are authorized by law.

The amendment to Floor Amendment No. 7 was read and failed of adoption by the following vote: Yeas 5, Nays 26.

Yeas: Madla, Montford, Sibley, Sims, Zaffirini.

Nays: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Moncrief,

Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Truan, Turner, Wentworth, West, Whitmire.

Question recurring on the adoption of Floor Amendment No. 7, the amendment was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3189 ON THIRD READING**

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 3189** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1.

Nays: Sims.

MESSAGE FROM THE HOUSE

House Chamber
May 22, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 220, Instructing the house enrolling clerk to make technical corrections in **H.B. 280**.

H.C.R. 219, In memory of Seferino Cabrera Romo.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

HOUSE BILL 768 ON SECOND READING

The President laid before the Senate **H.B. 768** on its second reading. The bill was read second time, amended, and further consideration was postponed on Friday, May 19, 1995, to a time certain of 11:00 a.m. Monday, May 22, 1995.

H.B. 768, Relating to statutory court judges and district judges exchanging benches and transferring cases.

Question—Shall **H.B. 768** as amended be passed to third reading?

VOTE RECONSIDERED

On motion of Senator Bivins and by unanimous consent, the vote by which Committee Amendment No. 1 was adopted was reconsidered.

Question—Shall Committee Amendment No. 1 to **H.B. 768** be adopted?

On motion of Senator Lucio and by unanimous consent, Committee Amendment No. 1 was withdrawn.

Senator Bivins offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 768**, SECTION 1, to read as follows:

SECTION 1. Section 74.121(b), Government Code is amended to read as follows:

(b)(1) The judge of a statutory county court may transfer a case to the docket of the district court, except that a case may not be transferred without the consent of the judge of the court to which it is being transferred and may not be transferred unless it is within the jurisdiction of the court to which it is transferred.

(2) Notwithstanding subsection (1), in matters of concurrent jurisdiction, a judge of a statutory county court in Midland County and a judge of a district court in Midland County may exchange benches and courtrooms with each other and may transfer cases between their dockets in the same manner that judges of district courts exchange benches and transfer cases under Section 24.303.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Ellis and West asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 768 ON THIRD READING

Senator Bivins moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 768** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, Whitmire, Zaffirini.

Nays: Ellis, West.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Ellis and West asked to be recorded as voting "Nay" on the final passage of the bill.

MOTION TO PLACE

HOUSE BILL 3193 ON SECOND READING

Senator Wentworth moved to suspend the regular order of business to take up for consideration at this time:

H.B. 3193, Relating to the creation, administration, powers, duties, operation, and financing of the Southwest Travis County Water District.

POINT OF ORDER

Senator Truan raised a point of order that the committee report on **H.B. 3193** was incomplete, stating that certain affidavits were not attached to the bill.

RULING ON POINT OF ORDER

The President issued the following ruling on the point of order:

Senator Truan raises a point of order against consideration of **H.B. 3193** on the ground that the committee report is incomplete because certain affidavits submitted in committee to be attached to the committee report are not attached.

The Chair has reviewed the committee report and finds it to be in compliance with Senate Rule 7.12, which specifies the matters to be included in a committee report.

The Chair will not go behind the committee report and official committee minutes to determine whether proceedings in a committee were regular. The minutes of the committee meeting at which **H.B. 3193** was reported are not required by Senate Rule 11.12 to be filed before May 25. In the absence of official committee minutes, the Chair has no basis on which to sustain the point of order.

Accordingly, the point of order is respectfully overruled.

POINT OF ORDER

Senator Truan raised the following point of order:

Mr. President, I raise a point of order against further consideration of **H.B. 3193** in that it violates Article 16, Section 59(c) of the Texas Constitution.

Argument

H.B. 3193 attempts to create the Southwest Travis County Water District, which is a conservation and reclamation district authorized by Article 16 Section 59 of the Texas Constitution, and such bill provides for its administration, powers, duties, operation, and financing.

While the Texas Constitution, and Article 16, Section 59, give the Legislature the power to create water districts and conservation and reclamation districts, and to make other laws appropriate thereto, Section 59(d) and (e) of Article 16, establish requirements which the Legislature must meet, as a condition precedent, to the consideration or enacting such a law.

Specifically, Article 16, Section 59(e) provides as follows: "No law creating a conservation and reclamation district shall be passed unless, at the time notice of the intention to introduce a bill is published as provided in Subsection (d) of this section, a copy of the proposed bill is delivered to the commissioners court of each county in which said district or any

part thereof is or will be located and to the governing body of each incorporated city or town in whose jurisdiction said district or any part thereof is or will be located. Each such commissioners court and governing body may file its written consent or opposition to the creation of the proposed district with the Governor, Lieutenant Governor, and Speaker of the House of Representatives. Each special law creating a conservation and reclamation district shall comply with the provisions of the general laws then in effect relating to consent by political subdivisions to the creation of conservation and reclamation districts and to the inclusion of land within the district."

Subsection (d) of Article 16, Section 59 requires, prior to the introduction of a bill creating a district authorized therein, that notice of intention to introduce such bill setting forth the general substance of the contemplated law be published at least thirty days and not more than ninety days prior to the introduction in a newspaper having general circulation in the county in which the district or part thereof is created. This is a condition precedent to the introduction of a bill authorized by Article 16 Section 59 of the Texas Constitution.

As quoted above, the Constitution clearly requires, as a condition precedent to the passage of a conservation and reclamation district authorized by Article 16 Section 59 of the Constitution, that at the time notice of intention to pass such a bill is published, a copy of the proposed bill be delivered to the commissioners court of each county in which the district or any part thereof is located as well as to the governing body of each incorporated city or town in whose jurisdiction said district or any part thereof is or will be located. The proposed district is admittedly located in Travis County and admittedly located in the extraterritorial jurisdiction of the City of Austin. Notice was not given to Travis County, nor was it given to the City of Austin. This is shown by the affidavits of the Mayor of the City of Austin, the City Clerk of the City of Austin, and the County Clerk of Travis County, all of which are attached to the Committee report and before the Senate along with this bill.

In adopting Article 16, Section 59, the people of Texas clearly understood the importance of the conservation and development of the state's natural resources, and that the creation of conservation and reclamation districts by the Legislature creates an additional tax burden within the area comprising such districts. The people constitutionally reserved unto themselves, through their local governmental units, the right to be notified of and provided with a copy of the proposed legislation to create such a district at least thirty days prior to its filing in the Legislature. The people further reserved unto themselves, through their local government units, the right to express their consent or opposition to the creation of such proposed districts with the Governor, the Lieutenant Governor and the Speaker of the House of Representatives.

These procedural requests were simply not followed, and I would urge the Chair to follow such procedural requirement of the Constitution that "No law creating a conservation and reclamation district shall be passed

unless, at the time notice of the intention to introduce a bill is published as provided in Subsection (d) of this Section, a copy of the proposed bill is delivered to the commissioners court of each county in which said district or any part thereof is or will be located and to the governing body of each incorporated city or town in whose jurisdiction said district or any part thereof is or will be located."

This is an affirmative duty upon the proponents of the bill, and it is their affirmative duty to provide the Legislature with proof that the procedural requirements of the Constitution have been followed. Not only have they not provided the Chair with proof of their compliance with the procedural requirements of Article 16 Section 59, but I have provided to the Chair sworn, uncontroverted affidavits that the procedural requirements were not followed.

Under the ruling that the Chair made on a point of order raised by Senator West to the handgun bill, the Chair limited itself in determining the correctness or incorrectness of the activities of a committee to those items which were in the committee report or other written minutes that were before the Senate. Under that ruling, the Chair is now limited to the consideration of those items which are a part of the committee report and before the Senate, and there is no challenge to the affidavits of non-compliance, consequently, the Chair has no alternative but to sustain my point of order. Even if there was a factual dispute by evidence which rises to the dignity of a sworn affidavit, the Chair would still have no alternative but to sustain my point of order because the proponents of this legislation have not met their burden by showing to the Legislature that all of the procedural requirements of the Constitution have been followed.

RULING ON POINT OF ORDER

The President issued the following ruling on the point of order:

Senator Truan has raised a point of order against consideration of **H.B. 3193** on the ground that certain procedural requirements imposed by Article 16, Section 59 of the Texas Constitution were not met.

The cited provision of the Constitution authorizes the legislature to create conservation and reclamation districts having certain purposes and powers. Subsections (d) and (e) of this provision require that certain procedural steps be taken before the legislature may pass a law creating such a district.

Subsection (d) imposes two requirements. One is that notice of intention to introduce such a bill be published. The second is that, at the time of publication, a copy of such bill be delivered to the Governor, who is to transmit the copy to the Texas Water Commission or its successor. The Commission is to file recommendations with the Governor, Lieutenant Governor, and Speaker within 30 days of the Commission receiving a copy of the bill.

Subsection (e) requires that, at the time notice of intention to introduce a bill is published, a copy of the bill be delivered to the commissioners court of each county in which the proposed district is to be located and

to the governing body of each incorporated city or town in whose jurisdiction the proposed district is to be located.

Chapter 313 of the Government Code prescribes a method for compliance with the constitutional requirement of publishing notice. That chapter specifies that proof of publication shall be by a publisher's affidavit which must accompany the bill when it is introduced in the legislature.

Neither the Constitution, laws, nor rules of the Senate establish a mechanism for compliance with any of the other notice requirements or a method of determining whether compliance has occurred.

Despite the absence of any such guidelines, the Chair has examined the available official records of the Senate. The records available to the Chair are:

- (1) **H.B. 3193**, documents attached to the bill as it was received from the House, and the Senate committee report on the bill;
- (2) A similar measure, **S.B. 1700**, documents attached to the bill, and the Senate committee report on the bill; and
- (3) The committee minutes filed with the Secretary of the Senate for the committee meeting on May 11, 1995, at which **S.B. 1700** was heard.

Based on these records, the Chair has been able to determine the following:

- (1) Publishers' affidavits from newspapers in Travis and Hays counties are attached to both **H.B. 3193** and **S.B. 1700**;
- (2) Comments by the Texas Natural Resource Conservation Commission are attached to **H.B. 3193**.

The Chair is unable to make further determination as to compliance with the constitutional requirements mentioned. In the absence of a statutory mechanism or rule of legislative procedure by which to determine such compliance, the Chair has no basis on which to sustain the point of order.

Accordingly, the point of order is respectfully overruled.

POINT OF ORDER

Senator Truan raised the following point of order:

Mr. President, I raise a further point of order against further consideration of **H.B. 3193** in that Section 7.01 in Article 7 of such bill it makes the naked and blatant statements that the proper and legal notice of intention to introduce this act has been published as provided by law and notice and a copy of this act have been furnished to all persons, agencies, officials or entities to which they are required to be furnished by the Constitution under the laws of this State, . . ." and also, that "all requirements of the Constitution and laws of this state and the rules and procedures of the Legislature with respect to the notice, introduction and passage of this act are fulfilled and accomplished", and such findings essentially place the Senate in the position of being a finder of fact, and there has been no evidence presented upon which to find such fact, and no rule of the Senate making provision for an evidentiary fact finding as stated in the bill.

Argument

There is no rule of the Senate which makes a provision for this body or any committee of this body to conduct the necessary evidentiary hearings to find the facts stated in the bill. For the Senate to consider this bill without such evidentiary hearings, as long as these provisions are in the bill, would require this Senate to misstate the truth of the nature of the proceedings conducted in the passage of this legislation. Since this bill states that the Senate has done something which it has no authority to do under its rules, it is therefore in violation of its rules.

RULING ON POINT OF ORDER

The President issued the following ruling on the point of order:

Senator Truan raises a point of order against consideration of **H.B. 3193** on the ground that Section 7.01 of the bill makes certain findings of fact that are beyond the capability of the Senate to make.

Section 7.01 recites findings of fact relating to compliance with constitutional notice requirements. The Chair believes that it is within the power of the legislature to make such findings of fact and to determine, by its vote on passage of a bill, whether such findings are adequately supported.

Accordingly, the point of order is respectfully overruled.

Question—Shall the regular order of business be suspended for **H.B. 3193**?

The motion to suspend the regular order of business was lost by the following vote: Yeas 20, Nays 11. (Not receiving two-thirds vote of Members present)

Yeas: Bivins, Brown, Cain, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Moncrief, Montford, Nelson, Nixon, Patterson, Shapiro, Sibley, Sims, Turner, Wentworth, Whitmire.

Nays: Armbrister, Barrientos, Ellis, Gallegos, Luna, Madla, Ratliff, Rosson, Truan, West, Zaffirini.

**COMMITTEE SUBSTITUTE
HOUSE BILL 788 ON SECOND READING**

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 788, Relating to industrial development corporations created by certain cities.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 788** (Senate committee printing) as follows:

1) On page 5, line 66, insert the following before "new": "tourism and".

2) On page 13, line 35, strike "On January 1, 1996" and substitute "As of the effective date of this Act".

The amendment was read and was adopted by a viva voce vote.

(Senator Armbrister in Chair)

Senator West offered the following amendment to the bill:

Floor Amendment No. 2

Amend C.S.H.B. 788 by adding to SECTION 1 of the Act a new subsection (a)(4) to read as follows:

(a)(4) A city may not levy a tax under Sections 4A or 4B of this Act within three years following the collection of any taxes within that city under Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes).

The amendment was read and was adopted by the following vote: Yeas 20, Nays 11.

Yeas: Armbrister, Barrientos, Brown, Cain, Ellis, Gallegos, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nixon, Rosson, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Bivins, Galloway, Harris, Haywood, Henderson, Nelson, Patterson, Ratliff, Shapiro, Sibley, Sims.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 3

Amend C.S.H.B. 788 in the following way:

(1) In Section 4B, add a new subsection (f) to read as follows:

(f) AUTHORIZED ADDITIONAL PROJECTS. Notwithstanding any other provisions of this chapter or Chapter 2303, Government Code, a professional sports team located and playing at a sports facility in a local government on January 1, 1995, may contract to relocate and play at a qualified sports facility project in another local government which is located in a county that contains two or more municipalities with a population of 250,000 or more according to the most recent federal census.

The amendment was read and was adopted by the following vote: Yeas 18, Nays 11, Present-not voting 1.

Yeas: Armbrister, Bivins, Brown, Haywood, Henderson, Lucio, Luna, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Truan, Zaffirini.

Nays: Barrientos, Cain, Ellis, Gallegos, Galloway, Leedom, Madla, Rosson, Wentworth, West, Whitmire.

Present-not voting: Harris.

Absent: Turner.

Senator Cain offered the following amendment to the bill:

Floor Amendment No. 4

Amend **C.S.H.B. 788** by adding a new section (c) to SECTION 2 to read as follows:

(c) A municipality that is participating in an authority under Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes) may create a corporation under 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) and is subject to the same restrictions and rights applicable under Section 4B as that Section existed immediately before the effective date of this Act.

The amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 5

Amend **C.S.H.B. 788** by inserting new Section 2 on page 13, line 20 as follows, and renumbering the remaining Sections:

SECTION 2. Section 321.101, Tax Code, is amended to read as follows:

Sec. 321.101. TAX AUTHORIZED. (a) A municipality may adopt or repeal a sales and use tax authorized by this chapter, other than the additional municipal sales and use tax, at an election in which a majority of the qualified voters of the municipality approve the adoption or repeal of the tax.

(b) A municipality that is not disqualified may, by a majority vote of the qualified voters of the municipality voting at an election held for that purpose, adopt an additional sales and use tax for the benefit of the municipality in accordance with this chapter. A municipality is disqualified from adopting the additional sales and use tax if the municipality:

(1) is included within the boundaries of a rapid transit authority created under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes);

(2) is included within the boundaries of a regional transportation authority created under Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), by a principal city having a population of less than 800,000, unless the city has a population of 400,000 or more and is located in more than one county;

(3) is wholly or partly located in a county that contains territory within the boundaries of a regional transportation authority created under Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), by a principal city having a population in excess of 800,000, unless:

(A) the city is a contiguous city; or

(B) the municipality is not included within the boundaries of the authority and is located wholly or partly in a county in which fewer

than 250 persons are residents of both the county and the authority according to the most recent federal census; or

(C) the municipality is not and on January 1, 1993, was not included within the boundaries of the authority; or

(4) imposes a tax authorized by Article 1118z, Revised Statutes.

(c) A municipality is not disqualified from adopting an additional sales and use tax if the municipality has not elected to participate in the authorities listed in Subsection (b) and does not impose the tax authorized under those subdivisions.

(d) For the purposes of Subsection (b), "principal city" and "contiguous city" have the meanings assigned by Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes).

(e) [(d)] In any municipality in which an additional sales and use tax has been imposed, in the same manner and by the same procedure the municipality by majority vote of the qualified voters of the municipality voting at an election held for that purpose may reduce, increase, or abolish the additional sales and use tax.

(f) [(e)] An authority created under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), or Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is prohibited from imposing the tax provided for in those Acts if within the boundaries of the authority there is a municipality that has adopted the additional sales and use tax provided for in this section.

(g) [(f)] A municipality may not adopt or increase a sales and use tax or an additional sales and use tax under this section if as a result of the adoption or increase of the tax the combined rate of all sales and use taxes imposed by the municipality and other political subdivisions of this state having territory in the municipality would exceed two percent at any location in the municipality.

(h) [(g)] For the purposes of Subsection (g) [(f)], "territory" in a municipality having a population of 5,000 or less and bordering on the Gulf of Mexico does not include any area covered by water and in which no person has a place of business to which a sales tax permit issued under Subchapter F of Chapter 151 applies.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 788 ON THIRD READING

Senator Ratliff moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 788** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Harris.

The bill was read third time and was passed by the following vote:
Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

HOUSE BILL 3193 ON SECOND READING

Senator Wentworth again moved to suspend the regular order of business to take up for consideration at this time:

H.B. 3193, Relating to the creation, administration, powers, duties, operation, and financing of the Southwest Travis County Water District.

The motion prevailed by the following vote: Yeas 22, Nays 9.

Yeas: Bivins, Brown, Cain, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Shapiro, Sibley, Sims, Turner, Wentworth, Whitmire.

Nays: Armbrister, Barrientos, Ellis, Luna, Ratliff, Rosson, Truan, West, Zaffirini.

Senator Truan moved to have a reading of the bill in full.

Senator Wentworth offered a substitute motion to not have a reading of the bill in full.

On motion of Senator Wentworth and by unanimous consent, the substitute motion was withdrawn.

Question recurring on the motion to have a reading of the bill in full, the motion was lost by the following vote: Yeas 7, Nays 24.

Yeas: Barrientos, Ellis, Luna, Rosson, Truan, West, Zaffirini.

Nays: Armbrister, Bivins, Brown, Cain, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Turner, Wentworth, Whitmire.

The bill was read second time.

Senator Barrientos moved to postpone further consideration of **H.B. 3193** to a time certain of 11:00 a.m. Wednesday, May 24, 1995.

On motion of Senator Wentworth, the motion to postpone further consideration of **H.B. 3193** was tabled by the following vote: Yeas 22, Nays 6.

Yeas: Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Moncrief, Montford, Nelson, Nixon, Ratliff, Shapiro, Sims, Turner, Wentworth, West, Whitmire.

Nays: Armbrister, Barrientos, Luna, Rosson, Truan, Zaffirini.

Absent: Bivins, Patterson, Sibley.

Senator Wentworth offered the following committee amendment to the bill:

Committee Amendment No. 1

Amending **H.B. 3193** by striking Section 2.03 and substituting the following:

SECTION 2.03. TERMS OF DIRECTORS AND APPOINTMENT PROCEDURES. (a) Other than initial directors, directors are appointed for staggered terms of six years with three members' terms expiring September 1 of each odd-numbered year.

(b) Appointment of initial directors shall be made promptly after this Act takes effect. The governor shall appoint three initial directors to serve a term expiring September 1, 1997, three initial directors to serve a term expiring September 1, 1999, and three initial directors to serve a term expiring September 1, 2001.

(c) When a director's term expires, the governor shall appoint a successor.

(d) When a director dies, resigns, or is otherwise removed, the governor shall appoint a successor to serve for the unexpired term.

The committee amendment was read and was adopted by the following vote: Yeas 23, Nays 7.

Yeas: Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Shapiro, Sibley, Sims, Turner, Wentworth, Whitmire.

Nays: Armbrister, Barrientos, Luna, Rosson, Truan, West, Zaffirini.

Absent: Ratliff.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 1A

Amend **H.B. 3193** by deleting the following numbered sections, and renumbering the remaining sections accordingly:

- (1) Section 2.07;
- (2) Section 3.01, subsection (b) (c) and (d).
- (3) Section 3.03;
- (4) Section 3.05;
- (5) Section 3.06, subsection (c);
- (6) Section 3.07, subsection (a)(2);
- (7) The words "and in effect on January 1, 1995." in Section 3.07, subsection (b);
- (8) Section 3.09, subsections (a) and (b);
- (9) Section 3.11, subsections (a) and (b);
- (10) Section 3.12, subsection (b) and (c);
- (11) Section 3.19, subsection (a), (b) and (c);
- (12) The words "or private sale" in Section 3.20, subsection (b);
- (13) Section 6.04, subsection (d);
- (14) Section 7.03.

The amendment was read.

On motion of Senator Wentworth, Floor Amendment No. 1A was tabled by the following vote: Yeas 23, Nays 7.

Yeas: Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Shapiro, Sibley, Sims, Turner, Wentworth, Whitmire.

Nays: Armbrister, Barrientos, Luna, Rosson, Truan, West, Zaffirini.

Absent: Ratliff.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 3193** as follows:

On page 2, line 12, delete "At least five of the" and substitute "All"

On page 6, beginning on line 33, delete proposed subsection (c).

The amendment was read.

On motion of Senator Barrientos and by unanimous consent, Floor Amendment No. 2 was temporarily withdrawn.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 3

Amend **H.B. 3193** as follows:

On page 2, delete proposed section 2.07.

On page 6, beginning on line 50, through page 7, line 17, delete proposed subsections (b) (c) and (d).

The amendment was read.

On motion of Senator Wentworth, Floor Amendment No. 3 was tabled by the following vote: Yeas 23, Nays 7.

Yeas: Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Shapiro, Sibley, Sims, Turner, Wentworth, Whitmire.

Nays: Armbrister, Barrientos, Luna, Rosson, Truan, West, Zaffirini.

Absent: Ratliff.

Senator Barrientos again offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 3193** as follows:

On page 2, line 12, delete "five" and substitute "seven"

On page 6, beginning on line 33, delete proposed subsection (c).

The amendment was again read.

On motion of Senator Wentworth, Floor Amendment No. 2 was tabled by the following vote: Yeas 23, Nays 7.

Yeas: Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Shapiro, Sibley, Sims, Turner, Wentworth, Whitmire.

Nays: Armbrister, Barrientos, Luna, Rosson, Truan, West, Zaffirini.

Absent: Ratliff.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 4

Amend **H.B. 3193** as follows:

On page 2, line 12, delete "five" and substitute "seven".

The amendment was read and was adopted by a viva voce vote.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 4A

Amend **H.B. 3193** by striking all below the enacting clause.

The amendment was read.

On motion of Senator Wentworth, Floor Amendment No. 4A was tabled by the following vote: Yeas 23, Nays 7.

Yeas: Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Shapiro, Sibley, Sims, Turner, Wentworth, Whitmire.

Nays: Armbrister, Barrientos, Luna, Rosson, Truan, West, Zaffirini.

Absent: Ratliff.

Question—Shall **H.B. 3193** as amended be passed to third reading?

AT EASE

The Presiding Officer, Senator Armbrister in Chair, at 3:25 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

Senator Moncrief at 3:39 p.m. called the Senate to order as In Legislative Session.

Question—Shall **H.B. 3193** as amended be passed to third reading?

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 5

Amend **H.B. 3193** as follows:

1. On page 5, strike lines 59 through 62 and renumber all subsequent sections appropriately.

The amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 6

Amend **H.B. 3193** as follows:

1. On page 3, line 51, strike "solid waste disposal".
2. On page 4, line 19, strike "solid waste disposal".

The amendment was read and was adopted by a viva voce vote.

VOTE RECONSIDERED

On motion of Senator Wentworth and by unanimous consent, the vote by which Floor Amendment No. 5 was adopted was reconsidered.

Question—Shall Floor Amendment No. 5 to **H.B. 1393** be adopted?

On motion of Senator Wentworth and by unanimous consent, Floor Amendment No. 5 was withdrawn.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 5A

Amend **H.B. 3193** as follows:

1. On page 5, strike lines 59 through 64 and renumber all subsequent sections appropriately.

The amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 7

Amend **H.B. 3193** as follows:

1. On page 7, between lines 63 and 64, insert the following: "(c) The district may not exercise the power of eminent domain to acquire property for any purpose not expressly granted to the district by this Act, and may not exercise the power of eminent domain to acquire property adjacent to and outside the district for any purpose other than the purposes set forth in Sections 3.01(a)(3) and 3.01(a)(4) of this Act."

The amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 8

Amend **H.B. 3193** as follows:

1. On page 5, lines 16 and 17, strike "and in effect on January 1, 1995".
2. On page 5, line 22, strike "and in effect on January 1, 1995".
3. On page 5, line 47, strike "and in effect on January 1, 1995".

The amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 9

Amend **H.B. 3193** as follows:

1. On page 2, line 35, before "51.078", insert "51.0721,".

2. On page 8, between lines 50 and 51, insert "(e) Notwithstanding any provision of this Act, any contract of the district shall meet the requirements of Chapter 171, Local Government Code."

The amendment was read and was adopted by a viva voce vote.

Senator Truan offered the following amendment to the bill:

Floor Amendment No. 10

Amend **H.B. 3193** as follows:

On page 1, by deleting the following sentence on lines 32 and 33 that reads: "A confirmation election is not necessary."

The amendment was read.

Senator Truan was recognized to speak on Floor Amendment No. 10.

POINT OF ORDER

Senator Wentworth raised a point of order that Senator Truan's remarks were not germane to Floor Amendment No. 10.

The Presiding Officer, Senator Moncrief in Chair, instructed Senator Truan to confine his remarks to the subject of the amendment.

(Senator Truan resumed discussion of Floor Amendment No. 10)

POINT OF ORDER

Senator Wentworth again raised a point of order that Senator Truan's remarks were not germane to Floor Amendment No. 10.

The Presiding Officer again instructed Senator Truan to confine his remarks to the subject of the amendment.

(Senator Truan resumed discussion of Floor Amendment No. 10)

Question—Shall Floor Amendment No. 10 to **H.B. 3193** be adopted?

Floor Amendment No. 10 was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 11

Amend **H.B. 3193** as follows:

(1) On page 3, lines 61 through 62, strike "and of a groundwater conservation district in existence on the effective date of this Act that is composed in whole or in part of the territory of the district".

(2) On page 3, lines 66 through 67, strike "except a groundwater conservation district in existence on the effective date of this Act,".

(3) On page 4, lines 11 through 14, strike "and of a groundwater conservation district in existence on the effective date of this Act that is composed in whole or in part of the territory of the district".

(4) On page 4, lines 15 through 17, strike "except a groundwater conservation district in existence on the effective date of this Act,".

(5) On page 22, strike lines 2 through 8.

The amendment was read and was adopted by a viva voce vote.

Senator Barrientos at 4:55 p.m. was recognized to speak on **H.B. 3193**.

Question—Shall **H.B. 3193** as amended be passed to third reading?

MESSAGE FROM THE HOUSE

House Chamber

May 22, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 20, Relating to transferring the powers and duties of the state treasurer to the comptroller of public accounts. (As substituted and amended)

S.B. 102, Relating to state employee contributions to the federal old age and survivors insurance program. (As amended)

S.B. 840, Relating to drug-free and weapon-free zones and to the imposition of penalties for the possession, delivery, manufacture, or possession with the intent to deliver or manufacture a controlled substance in drug-free zones or on school buses and penalties for certain offenses involving weapons committed in weapon-free zones. (As amended)

H.C.R. 221, Instructing the house enrolling clerk to make technical corrections in **H.B. 2062**.

S.B. 94, Relating to the regulation of political contributions, political expenditures, and political advertising in connection with certain judicial candidates and officeholders and to personal financial statements filed by certain judicial officeholders; providing civil and criminal penalties. (As substituted and amended)

S.C.R. 158, Designating the month of May as Texas Special Olympics Summer Games Month.

H.C.R. 222, Instructing the house enrolling clerk to make a technical correction in **H.B. 160**.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

Question—Shall **H.B. 3193** as amended be passed to third reading?

(Senator Barrientos resumed discussion of **H.B. 3193**)

(Senator Truan in Chair)

(Senator Turner in Chair)

(Senator Nixon in Chair)

(Senator Madla in Chair)

(Senator Galloway in Chair)

(Senator Brown in Chair)

(Senator Ellis in Chair)

(Midnight)

(Tuesday, May 23, 1995)

(Senator Bivins in Chair)

POINT OF ORDER

Senator Wentworth raised a point of order that Senator Barrientos was not at his desk.

The Presiding Officer, Senator Bivins in Chair, instructed Senator Barrientos to remain at his desk.

POINT OF ORDER

Senator Wentworth raised a point of order calling for strict enforcement of Senate Rule 3.05 that prohibits outbursts, applause, or other demonstrations by spectators during a session of the Senate.

The Presiding Officer advised the Senate and the spectators that Senate Rule 3.05 would be strictly enforced.

(Senator Barrientos resumed discussion of H.B. 3193)

Senator Barrientos at 1:22 a.m. yielded the floor of the Senate.

Question—Shall **H.B. 3193** as amended be passed to third reading?

Senator Wentworth moved that **H.B. 3193** be passed to third reading.

The motion was lost by the following vote: Yeas 12, Nays 8. (The roll call reflected the lack of a quorum)

Yeas: Bivins, Brown, Galloway, Lecdom, Madla, Moncrief, Montford, Nelson, Shapiro, Turner, Wentworth, West.

Nays: Armbrister, Barrientos, Ellis, Haywood, Luna, Ratliff, Sibley, Zaffirini.

Absent: Cain, Gallegos, Harris, Henderson, Lucio, Nixon, Patterson, Rosson, Sims, Truan, Whitmire.

MOTION TO ADJOURN

Senator Barrientos moved that the Senate adjourn until 10:00 a.m. today, Tuesday, May 23, 1995.

The motion was lost by the following vote: Yeas 8, Nays 16.

Yeas: Armbrister, Barrientos, Ellis, Luna, Montford, Truan, West, Zaffirini.

Nays: Bivins, Brown, Gallegos, Galloway, Haywood, Leedom, Lucio, Madla, Moncrief, Nelson, Ratliff, Shapiro, Sibley, Turner, Wentworth, Whitmire.

Absent: Cain, Harris, Henderson, Nixon, Patterson, Rosson, Sims.

Question—Shall **H.B. 3193** as amended be passed to third reading?

The bill as amended was passed to third reading by the following vote:
Yeas 16, Nays 9.

Yeas: Bivins, Brown, Gallegos, Galloway, Henderson, Leedom, Lucio, Madla, Moncrief, Montford, Nelson, Shapiro, Turner, Wentworth, West, Whitmire.

Nays: Armbrister, Barrientos, Ellis, Haywood, Luna, Ratliff, Sibley, Truan, Zaffirini.

Absent: Cain, Harris, Nixon, Patterson, Rosson, Sims.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 626**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 22, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 626** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ARMBRISTER

RATLIFF

SIMS

MONTFORD

BARRIENTOS

On the part of the Senate

YOST

BOSSE

WALKER

HOCHBERG

R. LEWIS

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to certain laws governing water districts and nonprofit water or sewer service corporations; creating penalties; granting authority to issue bonds; granting the power of eminent domain.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.002, Water Code, is amended to read as follows:

Sec. 1.002. CONSTRUCTION OF CODE. (a) The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

(b) In this code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

(2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of this code in which the reference appears.

(c) A reference in a law to a statute or part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of the statute.

SECTION 2. Title 4, Water Code, is amended by adding Chapter 49 to read as follows:

CHAPTER 49. PROVISIONS APPLICABLE TO ALL DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 49.001. DEFINITIONS. (a) As used in this chapter:

(1) "District" means any district or authority created by authority of either Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, regardless of how created. The term "district" shall not include any navigation district or port authority created under general or special law or any conservation and reclamation district created pursuant to Chapter 62, Acts of the 52nd Legislature, 1951 (Article 8280-141, Vernon's Texas Civil Statutes).

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Board" means the governing body of a district.

(4) "Executive director" means the executive director of the commission.

(5) "Water supply corporation" means a nonprofit water supply or sewer service corporation created or operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).

(6) "Director" means either a supervisor or director appointed or elected to the board.

(7) "Municipal solid waste" has the same meaning assigned by Section 361.003, Health and Safety Code.

(8) "Special water authority" means a river authority as that term is defined in Section 30.003, or a district created by a special Act of the legislature that:

(A) is a provider of water or wastewater service to two or more municipalities; and

(B) is governed by a board of directors appointed or designated in whole or in part by the governor, the Texas Water Development Board, or municipalities within its service area.

(9) "Potable water" means water that has been treated for public drinking water supply purposes.

(b) These definitions are for use in this chapter only, and have no effect on any other statute or code unless specifically referenced by that statute or code.

Sec. 49.002. APPLICABILITY. This chapter applies to all general and special law districts to the extent that the provisions of this chapter do not directly conflict with a provision in any other chapter of this code or any Act creating or affecting a special law district. In the event of such conflict, the specific provisions in such other chapter or Act shall control.

Sec. 49.003. PENALTY. A district that fails to comply with the filing provisions of this code may be subject to a civil penalty of up to \$100 per day for each day the district wilfully continues to violate these provisions after receipt of written notice of violation from the executive director by certified mail, return receipt requested. The state may sue to recover the penalty.

Sec. 49.004. PENALTY FOR VIOLATION OF DISTRICT RULES. (a) The board may set reasonable civil penalties for the breach of any rule of the district that shall not exceed the jurisdiction of a justice court as provided by Section 27.031, Government Code.

(b) A penalty under this section is in addition to any other penalty provided by the law of this state and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office or meeting place is located.

(c) If the district prevails in any suit to enforce its rules, it may, in the same action, recover reasonable fees for attorneys, expert witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.

[Sections 49.005-49.009 reserved for expansion]

SUBCHAPTER B. CREATION

Sec. 49.010. ORDER OR ACT CREATING DISTRICT. Within 60 days after the date a district is created, the district shall file with the executive director a certified copy of the order or legislative Act creating the district or authorizing its creation, unless the district was created by order of the commission.

[Sections 49.011-49.050 reserved for expansion]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 49.051. BOARD OF DIRECTORS. A district shall be governed by its board, the number of which is otherwise provided by law.

Sec. 49.052. DISQUALIFICATION OF DIRECTORS. (a) A person is disqualified from serving as a member of a board of a district that includes less than all the territory in at least one county and which, if located within the corporate area of a city or cities, includes within its boundaries less than 75 percent of the incorporated area of the city or cities, if that person:

(1) is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the board,

or the manager, engineer, attorney, or other person providing professional services to the district;

(2) is an employee of any developer of property in the district or any director, manager, engineer, attorney, or other person providing professional services to the district or a developer of property in the district in connection with the district or property located in the district;

(3) is a developer of property in the district;

(4) is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district;

(5)(A) is a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) is a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence, establishing a commercial business within the district, or qualifying as a director; or

(6) during the term of office, fails to maintain the qualifications required by law to serve as a director.

(b) Within 60 days after the board determines a relationship or employment exists which constitutes a disqualification under Subsection (a), it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who wilfully occupies an office as a member of a board and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) is guilty of a misdemeanor and, on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

(f) This section shall not apply to special water authorities, districts defined in Section 49.181(h)(4), or a district where the principal function of the district is to provide irrigation water to agricultural lands or to provide nonpotable water for any purpose.

(g) A board by unanimous vote of its remaining members may remove a board member only if that board member has missed one-half or more

of the regular meetings scheduled during the prior 12 months. Any board member so removed may file a written appeal with the commission within 30 days after receiving written notice of the board action. The commission may reinstate a removed director if the commission finds that the removal was unwarranted under the circumstances, including the reasons for absences, the time and place of the meetings missed, the business conducted at the meetings missed, and any other facts or circumstances the commission may deem relevant.

Sec. 49.053. QUORUM. A majority of the membership of the board constitutes a quorum for any meeting, and a concurrence of a majority of the entire membership of the board is sufficient for transacting any business of the district. This section does not apply to special water authorities.

Sec. 49.054. OFFICERS. (a) After a district is created and the directors have qualified, the board shall meet, elect a president, vice-president, secretary, and any other officers or assistant officers as the board may deem necessary, and begin the discharge of its duties.

(b) After each directors election, the board shall meet and elect officers.

(c) The president is the chief executive officer of the district, presides at all meetings of the board, and shall execute all documents on behalf of the district. The vice-president shall act as president in case of the absence or disability of the president. The secretary is responsible for seeing that all records and books of the district are properly kept and shall attest the president's signature on all documents.

(d) The board may appoint another director, the general manager, or any employee as assistant or deputy secretary to assist the secretary, and any such person shall be entitled to certify as to the authenticity of any record of the district, including but not limited to all proceedings relating to bonds, contracts, or indebtedness of the district.

(e) After any election or appointment of a director, a district shall notify the executive director within 30 days after the date of the election or appointment of the name and mailing address of the director chosen and the date that director's term of office expires. The executive director shall provide forms to the district for such purpose.

(f) This section does not apply to special water authorities.

Sec. 49.055. SWORN STATEMENT, BOND, AND OATH OF OFFICE.

(a) As soon as practicable after a director is elected or appointed, that director shall make the sworn statement prescribed by the constitution for public office.

(b) As soon as practicable after a director has made the sworn statement, and before beginning to perform the duties of office, that director shall take the oath of office prescribed by the constitution for public officers.

(c) Before beginning to perform the duties of office, each director shall execute a bond for \$10,000 payable to the district and conditioned on the faithful performance of that director's duties. All bonds of the directors shall be approved by the board and paid for by the district.

(d) The sworn statement, bond, and oath shall be filed with the district and retained in its records. A duplicate original of the sworn statement and the oath shall also be filed with the secretary of state within 10 days after their execution and need not be filed before the new director begins to perform the duties of office.

(e) This section does not apply to special water authorities.

Sec. 49.056. GENERAL MANAGER. (a) The board may employ or contract with a person to perform such services as general manager for the district as the board may from time to time specify. The board may delegate to the general manager full authority to manage and operate the affairs of the district subject only to orders of the board.

(b) The board may delegate to the general manager the authority to employ all persons necessary for the proper handling of the business and operation of the district and to determine the compensation to be paid all employees other than the general manager.

(c) Except as provided by Section 49.052, a director may be employed as general manager of the district, but the compensation of a general manager who also serves as a director shall be established by the other directors.

Sec. 49.057. MANAGEMENT OF DISTRICT. (a) The board shall be responsible for the management of all the affairs of the district. The district shall employ or contract with all persons, firms, partnerships, corporations, or other entities, public or private, deemed necessary by the board for the conduct of the affairs of the district, including, but not limited to, engineers, attorneys, financial advisors, operators, bookkeepers, tax assessors and collectors, auditors, and administrative staff.

(b) The board shall adopt an annual budget. All district employees are employed at the will of the district unless the district and employee execute a written employment contract.

(c) The board shall set the compensation and terms for consultants.

(d) In selecting attorneys, engineers, auditors, financial advisors, or other professional consultants, the district shall follow the procedures provided in Subchapter A, Chapter 2254, Government Code (Professional Services Procurement Act).

(e) The board shall require an officer, employee, or consultant who collects, pays, or handles any funds of the district to furnish good and sufficient bond, payable to the district, in an amount determined by the board to be sufficient to safeguard the district. The bond shall be conditioned on the faithful performance of that person's duties and on accounting for all funds and property of the district. Such bond shall be signed or endorsed by a surety company authorized to do business in the state.

(f) The board may pay the premium on surety bonds required of officials, employees, or consultants of the district out of any available funds of the district, including proceeds from the sale of bonds.

(g) The board may adopt bylaws to govern the affairs of the district to perform its purposes. The board may, by resolution, authorize its general manager or other employee to execute documents on behalf of the district.

(h) The board shall also have the right to purchase all materials, supplies, equipment, vehicles, and machinery needed by the district to perform its purposes.

Sec. 49.058. CONFLICTS OF INTEREST. A director of a district is subject to the provisions of Chapter 171, Local Government Code, relating to the regulation of conflicts of interest of officers of local governments.

Sec. 49.059. DISQUALIFICATION OF TAX ASSESSOR AND COLLECTOR. (a) No person may serve as tax assessor and collector of a district providing potable water or sewer utility services to household users if that person:

(1) is related within the third degree of affinity or consanguinity to any developer of property in the district, a member of the board, or the manager, engineer, or attorney for the district;

(2) is or was within two years immediately preceding the assumption of assessment and collection duties with the district an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

(3) owns an interest in or is employed by any corporation organized for the purpose of tax assessment and collection services, a substantial portion of the stock of which is owned by a developer of property within the district or any director, manager, engineer, or attorney for the district; or

(4) is directly or through a corporation developing land in the district or is a director, engineer, or attorney for the district.

(b) Within 60 days after the board determines a relationship or employment exists which constitutes a disqualification under Subsection (a), it shall replace the person serving as tax assessor and collector with a person who would not be disqualified.

(c) Any person who wilfully violates the provisions of Subsection (a) is guilty of a misdemeanor and on conviction shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" has the same meaning as in Section 49.052(d).

Sec. 49.060. FEES OF OFFICE; REIMBURSEMENT. (a) A director is entitled to receive fees of office of not more than \$100 a day for each day the director actually spends performing the duties of a director. The fees of office may not exceed \$6,000 per annum except for directors of a special water authority which is engaged in the distribution and sale of electric energy to the public.

(b) Each director is also entitled to receive reimbursement of actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the district.

(c) In order to receive fees of office and to receive reimbursement for expenses, each director shall file with the district a verified statement showing the number of days actually spent in the service of the district and a general description of the duties performed for each day of service.

(d) Section 49.002 notwithstanding, in all areas of conflict the provisions of this section shall take precedence over all prior statutory

enactments. If the enactment of this section results in an increase in the fees of office for any district, that district's fees of office shall not increase unless the board adopts a resolution authorizing payment of the higher fees.

Sec. 49.061. SEAL. The directors shall adopt a seal for the district.

Sec. 49.062. OFFICES AND MEETING PLACES. (a) The board shall designate from time to time and maintain one or more regular offices for conducting the business of the district and maintaining the records of the district. Such offices may be located either inside or outside the district's boundaries as determined in the discretion of the board.

(b) The board shall designate one or more places inside or outside the district for conducting the meetings of the board. The meeting place may be a private residence or office, provided that the board, in its order establishing the meeting place, declares the same to be a public place and invites the public to attend any meeting of the board. If the board establishes a meeting place or places outside the district, it shall give notice of the location or locations by filing a true copy of the resolution establishing the location or locations of the meeting place or places with the commission and also by publishing notice of the location or locations in a newspaper of general circulation in the district. If the location of any of the meeting places outside the district is changed, notice of the change shall be given in the same manner.

(c) After at least 25 qualified electors are residing in a district, on written request of at least five of those electors, the board shall designate a meeting place and hold meetings within the district if it determines that the meeting place used by the district deprives the residents of a reasonable opportunity to attend district meetings. On the failure to designate the location of the meeting place within the district, five electors may petition the commission to designate a location. If it determines that the meeting place used by the district deprives the residents of a reasonable opportunity to attend district meetings, the commission may designate a meeting place inside or outside the district which is reasonably available to the public and require that the meetings be held at such place. After the next election, the board may designate different meeting places, including one located outside the boundaries of the district.

(d) Two or more districts may designate and share offices and meeting places. This section does not apply to special water authorities.

Sec. 49.063. NOTICE OF MEETINGS. Notice of meetings of the board shall be given as set forth in the open meetings law, Chapter 551, Government Code, except that if a district does not have a meeting place within the district, the district shall post notice of its meeting at a public place within the district specified by the board in a written resolution, rather than at its administrative office. The board shall specify such public place to be a bulletin board or other place within the district which is reasonably available to the public. Neither failure to provide notice of a regular meeting nor an insubstantial defect in notice of any meeting shall affect the validity of any action taken at the meeting.

Sec. 49.064. MEETINGS. The board shall hold such regular and special meetings as may be necessary for the proper conduct of the district's business. All meetings shall be conducted in accordance with the open meetings law, Chapter 551, Government Code. A meeting of a committee of the board, or a committee composed of representatives of more than one board, where less than a quorum of any one board is present is not subject to the provisions of the open meetings law, Chapter 551, Government Code.

Sec. 49.065. RECORDS. (a) The board shall keep a complete account of all its meetings and proceedings and shall preserve its minutes, contracts, records, notices, accounts, receipts, and other records in a safe place.

(b) The records of each district are the property of the district and are subject to the open records law, Chapter 552, Government Code.

(c) The preservation, microfilming, destruction, or other disposition of the records of each district is subject to the requirements of Chapter 201, Local Government Code, and rules adopted thereunder.

Sec. 49.066. SUITS. (a) A district may sue and be sued in the courts of this state in the name of the district by and through its board. All courts shall take judicial notice of the creation of the district and of its boundaries.

(b) Any court in the state rendering judgment for debt against a district may order the board to levy, assess, and collect taxes or assessments to pay the judgment.

(c) The president or the general manager of any district shall be the agent of the district on whom process, notice, or demand required or permitted by law to be served upon the district may be served.

(d) Except as provided in Subsection (e), no suit may be instituted in any court of this state contesting:

(1) the validity of the creation and boundaries of a district created under this code;

(2) any bonds or other obligations created under this code; or

(3) the validity or the authorization of a contract with the United States by the district.

(e) The matters listed in Subsection (d) may be judicially inquired into at any time and determined in any suit brought by the State of Texas through the attorney general. The action shall be brought on good cause shown, except where otherwise provided by other provisions of this code or by the Texas Constitution. It is specifically provided, however, that no such proceeding shall affect the validity of or security for any bonds or other obligations theretofore issued by a district if such bonds or other obligations have been approved by the attorney general as provided by Section 49.184.

(f) A district or water supply corporation shall not be required to give bond for appeal, injunction, or costs in any suit to which it is a party and shall not be required to deposit more than the amount of any award in any eminent domain proceeding.

Sec. 49.067. CONTRACTS. A district shall contract, and be contracted with, in the name of the district.

Sec. 49.068. CONTRACTS WITH GOVERNMENTAL AGENCIES. The provisions of this chapter pertaining to bids and the Local Government Code notwithstanding, a district may purchase property from any governmental entity by negotiated contract without the necessity of securing appraisals or advertising for bids.

Sec. 49.069. EMPLOYEE BENEFITS. (a) The board may provide for and administer retirement, disability, and death compensation funds for the employees of the district.

(b) The board may establish a public retirement system in accordance with the provisions of Chapter 810, Government Code. The board may also provide for a deferred compensation plan described by Section 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 457).

(c) The board may include hospitalization and medical benefits to its employees as part of the compensation paid to the officers and employees and may adopt any plan, rule, or regulation in connection with it and amend or change the plan, rule, or regulation as it may determine.

Sec. 49.070. WORKERS' COMPENSATION. The board may become a subscriber under Title 5, Labor Code (Texas Workers' Compensation Act), with any insurance company authorized to write the policies in the State of Texas.

Sec. 49.071. DISTRICT NAME CHANGE. (a) On petition by a district showing reasonable grounds for a name change, the commission by order may change the name of the district to the name requested by the district. The new name must be generally descriptive of the location of the district followed by the type of district as provided by the title of the chapter of the Water Code governing the district. If a district is located wholly within one county that contains more than one district of that type, the district may be differentiated, if necessary, by adding to the new name the proper consecutive number. The new name may not be the same as the name of any other district in the county.

(b) A name change takes effect on the date of issuance of the commission order making the name change.

(c) Not later than the 30th day after the date of issuance of the commission order making the name change, the district shall publish notice of the name change in a newspaper or newspapers of general circulation in the county or counties in which the district is located. Within that same period, the district shall also give notice of the name change by mail to utility customers or permittees, if any, and, to the extent practicable, to the holders of bonds, obligations, and other indebtedness of the district. Failure of the district to comply with this subsection does not affect the validity of the name change.

(d) A change in the name of a district does not affect bonds, obligations, or other indebtedness of the district existing before the name change occurred.

[Sections 49.072-49.100 reserved for expansion]

SUBCHAPTER D. ELECTION PROVISIONS

Sec. 49.101. GENERAL. All elections shall be generally conducted in accordance with the Election Code except as otherwise provided for by this

code. Write-in candidacies for any district office shall be governed by Subchapter C, Chapter 146, Election Code.

Sec. 49.102. CONFIRMATION AND DIRECTOR ELECTION.

(a) Before issuing any bonds or other obligations, an election shall be held within the boundaries of the proposed district to determine if the proposed district shall be established and, if the directors of the district are required by law to be elected, to elect permanent directors.

(b) Notice of a confirmation or director election shall state the day and place or places for holding the election, the propositions to be voted on, and the number of directors to be voted on.

(c) The ballots for a confirmation election shall be printed to provide for voting "For District" and "Against District." Ballots for a directors election shall provide the names of the persons appointed by the governing body who qualified and are serving as temporary directors at the time the election is called. The ballots shall also have blank places after the names of the temporary directors in which a voter may write the names of other persons for directors.

(d) Immediately after the confirmation and director election, the presiding judge shall take returns of the results to the temporary board. The temporary board shall canvass the returns and declare the results at the earliest practicable time.

(e) If a majority of the votes cast in the election favor the creation of the district, then the temporary board shall declare that the district is created and enter the result in its minutes. If a majority of the votes cast in the election are against the creation of the district, the temporary board shall declare that the district was defeated and enter the result in its minutes. A copy of the order shall be filed with the commission.

(f) The order canvassing the results of the confirmation election shall contain a description of the district's boundaries and shall be filed with the executive director and in the deed records of the county or counties in which the district is located.

(g) The temporary board shall also declare the persons receiving the highest number of votes for directors to have been elected as permanent directors.

(h) Unless otherwise agreed, the directors shall decide the initial terms of office by lot, with a simple majority of directors serving until the second succeeding directors election and the remaining directors serving until the next directors election.

(i) The provisions of this section shall not be applicable to any district exercising the powers of Chapter 375, Local Government Code, or any district created by a special Act of the legislature that does not require a confirmation election.

Sec. 49.103. TERMS OF OFFICE OF DIRECTORS. (a) Except as provided by Section 49.102, the members of the board of a district shall serve for four-year terms.

(b) An election shall be held on the uniform election date, established by the Election Code, in either January or May of each even-numbered year to elect the appropriate number of directors.

(c) The permanent directors may assign a position number to each director's office, in which case directors shall thereafter be elected by position and not at large.

(d) A district may provide for the election of all directors, or a majority of directors, from single-member districts, which shall be geographically described within the boundaries of the district in a manner that is equitable for the electors within such districts and within the district generally.

(e) Section 49.002 notwithstanding, in all areas of conflict the provisions of Subsection (b) shall take precedence over all prior statutory enactments.

(f) This section does not apply to any special law district or authority that is not required by the law creating the district or authority to elect its directors by the public.

Sec. 49.104. ALTERNATIVE ELECTION PROCEDURES. (a) Notwithstanding the provisions and requirements of the Election Code and general laws, any two or more districts situated in the same county and in which substantially all of the land is being or has been developed as part of a single community development plan and which are served by common water supply and waste disposal systems may by mutual agreement designate a common election office and common early and regular polling places within one or more of the districts, but outside the boundaries of one or more of the districts, for the conduct of director election proceedings and early and regular balloting in director elections. This alternative election procedure may only be used if the common election office and polling places so designated:

(1) are within buildings open to the public;

(2) are within the boundaries of at least one of the districts;

(3) meet the requirements of the Election Code and general laws as polling places; and

(4) are located not more than five miles from any portion of the boundaries of any of the participating districts.

(b) Such districts may also agree upon and designate a common election officer and common early and regular voting officials for some or all of the director elections to be simultaneously conducted at a common location, any of whom may be nonelective employees of one or more of the districts, so long as the early and regular voting officials are qualified voters within at least one of the districts.

Sec. 49.105. VACANCIES. (a) Except as otherwise provided in this code, all vacancies on the board and in other offices shall be filled for the unexpired term by appointment of the board.

(b) If the number of directors is reduced to fewer than a majority, the vacancies shall be filled by appointment by the commission or the county commissioners court if the district was created by the county commissioners court. An appointed director shall serve for the unexpired term of the director he or she is replacing.

(c) In the event of a failure to elect one or more members of the board of a district resulting from the absence of, or failure to vote by, the

qualified voters in the district, the current members of the board holding the positions not filled at such election shall be deemed to have been reelected and shall serve an additional term of office.

Sec. 49.106. BOND ELECTIONS. (a) Before an election is held to authorize the issuance of bonds, other than refunding bonds, there shall be filed in the office of the district and open to inspection by the public an engineer's report covering the land, improvements, facilities, plants, equipment, and appliances to be purchased or constructed and their estimated cost, together with maps, plats, profiles, and data fully showing and explaining the report.

(b) Notice of a bond election shall contain the proposition or propositions to be voted upon, which includes the estimate of the probable cost of design, construction, purchase, and acquisition of improvements and additions thereto, and incidental expenses connected with such improvements and the issuance of bonds.

(c) A bond election may be held on the same day as any other district election. The bond election may be called by a separate election order or as a part of any other election order. The board may submit multiple purposes in a single proposition at an election.

Sec. 49.107. OPERATION AND MAINTENANCE TAX. (a) A district may levy and collect a tax for operation and maintenance purposes, including funds for planning, constructing, acquiring, maintaining, repairing, and operating all necessary land, plants, works, facilities, improvements, appliances, and equipment of the district and for paying costs of proper services, engineering and legal fees, and organization and administrative expenses.

(b) An operation and maintenance tax may not be levied by a district until it is approved by a majority of the electors voting at an election held for that purpose. After such a tax has been authorized by the district's voters, the board shall be authorized to levy the tax and have it assessed and collected as other district taxes.

(c) An operation and maintenance tax election may be held at the same time and in conjunction with any other district election. The election may be called by a separate election order or as part of any other election order.

(d) The proposition in an operation and maintenance tax election may be for a specific maximum rate or for an unlimited rate.

(e) If a district has any surplus operation and maintenance tax funds that are not needed for the purposes for which they were collected, the funds may be used for any lawful purpose.

(f) Before a district reimburses a developer of property in the district, as that term is defined in Section 49.052(d), or its assigns, from operation and maintenance tax funds, for planning, constructing, or acquiring facilities, the district shall obtain approval by the executive director.

Sec. 49.108. CONTRACT ELECTIONS. (a) A contract may provide that the district will make payment under the contract from proceeds from the sale of notes or bonds, from taxes, or from any other income of the district or any combination of these.

(b) A district may make payments under a contract from taxes other than operation and maintenance taxes after the provisions of the contract have been approved by a majority of the electors voting at an election held for that purpose.

(c) A contract election may be held at the same time and in conjunction with any other district election. The election may be called by a separate election order or as part of any other election order.

(d) A contract approved by the voters will constitute an obligation against the taxing power of the district to the extent provided in the contract.

[Sections 49.109-49.150 reserved for expansion]

SUBCHAPTER E. FISCAL PROVISIONS

Sec. 49.151. EXPENDITURES. (a) Except as hereinafter provided, a district's money may be disbursed only by check, draft, order, or other instrument that shall be signed by at least a majority of the directors.

(b) The board may by resolution allow the general manager, treasurer, bookkeeper, or other employee of the district to sign disbursements.

(c) The board may by resolution allow disbursements to be transferred by federal reserve wire system to accounts in the name of the district.

Sec. 49.152. PURPOSES FOR BORROWING MONEY. The district may borrow money for any corporate purpose or combination of corporate purposes only in compliance with the methods and procedures specifically provided by this chapter or by general law.

Sec. 49.153. REVENUE NOTES. (a) The board, without the necessity of an election, may borrow money on negotiable notes of the district to be paid solely from the revenues derived from the ownership of all or any designated part of the district's works, plants, improvements, facilities, or equipment after deduction of the reasonable cost of maintaining and operating the facilities.

(b) The notes may be first or subordinate lien notes within the discretion of the board, but no obligation may ever be a charge on the property of the district or on taxes levied or collected by the district but shall be solely a charge on the revenues pledged for the payment of the obligation. No part of the obligation may ever be paid from taxes levied or collected by the district.

(c) A district may not execute a note for a term longer than three years unless the commission issues an order approving the note.

(d) This section does not apply to special water authorities.

Sec. 49.154. BOND ANTICIPATION NOTES; TAX ANTICIPATION NOTES. (a) The board may declare an emergency in the matter of funds not being available to pay principal of and interest on any bonds of the district payable in whole or in part from taxes or to meet any other needs of the district and may issue negotiable tax anticipation notes or negotiable bond anticipation notes to borrow the money needed by the district without advertising or giving notice of the sale. Bond anticipation notes and tax anticipation notes shall mature within one year of their date.

(b) Tax anticipation notes may be issued for any purpose for which the district is authorized to levy taxes, and tax anticipation notes shall be

secured with the proceeds of taxes to be levied by the district in the succeeding 12-month period. The board may covenant with the purchasers of the notes that the board will levy a sufficient tax to pay the principal of and interest on the notes and pay the costs of collecting the taxes.

(c) Bond anticipation notes may be issued for any purpose for which bonds of the district may have previously been voted or may be issued for the purpose of refunding previously issued bond anticipation notes. A district may covenant with the purchasers of the bond anticipation notes that the district will use the proceeds of sale of any bonds in the process of issuance for the purpose of refunding the bond anticipation notes, in which case the board will be required to use the proceeds received from sale of the bonds in the process of issuance to pay principal, interest, or redemption price on the bond anticipation notes.

(d) Districts required to seek commission approval of bonds must have an application for such approval on file with the commission prior to the issuance of bond anticipation notes.

Sec. 49.155. REPAYMENT OF EXPENSES. (a) The district may pay all costs and expenses necessarily incurred in the organization and operation of a district during creation and construction periods including, but not limited to, the following:

- (1) organizational, administrative, and operating expenses;
- (2) the cost of investigation and making plans;
- (3) the cost of the engineer's report;
- (4) legal fees; and
- (5) any other incidental expenses.

(b) For purposes of this section, construction periods shall mean any periods during which the district is constructing its facilities or there is construction by third parties of above ground improvements within the district, but in no event longer than five years.

(c) The district may reimburse any person for money advanced for the purposes in Subsection (a) and may be charged interest on such funds.

(d) These payments may be made from money obtained from the issuance of notes or the sale of bonds issued by the district or out of maintenance taxes or other revenues of the district.

Sec. 49.156. DEPOSITORY. (a) The board, by order or resolution, shall designate one or more banks or savings associations within the state to serve as the depository for the funds of the district. The board shall not be required to advertise or solicit bids in selecting its depositories.

(b) To the extent that funds in the depository banks or savings associations are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided by law for the security of funds by Chapter 2257, Government Code (Public Funds Collateral Act).

(c) The board may authorize a designated representative to supervise the substitution of securities pledged to secure the district's funds.

Sec. 49.157. INVESTMENTS. (a) All district deposits and investments shall be governed by Subchapter A, Chapter 2256, Government Code (Public Funds Investment Act).

(b) The board may provide that an authorized representative of the district may invest and reinvest the funds of the district and provide for money to be withdrawn from the appropriate accounts of the district for the investments on such terms as the board considers advisable.

Sec. 49.158. FISCAL YEAR. Within 30 days after a district becomes financially active, the board shall adopt a fiscal year by a formal board resolution. The district shall notify the executive director of the adopted fiscal year within 30 days after adoption. The district may change its fiscal year at any time; provided, however, it may not be changed more than once in any 24-month period. After any change in the district's fiscal year, the district shall notify the executive director of the changed fiscal year within 30 days after adoption.

[Sections 49.159-49.180 reserved for expansion]

SUBCHAPTER F. ISSUANCE OF BONDS

Sec. 49.181. AUTHORITY OF COMMISSION OVER ISSUANCE OF DISTRICT BONDS. (a) A district may not issue bonds unless the commission determines that the project to be financed by the bonds is feasible and issues an order approving the issuance of the bonds. This section does not apply to refunding bonds or bonds issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, or the Texas Water Development Board.

(b) A district may submit to the commission a written application for investigation of feasibility. An engineer's report describing the project, including the data, profiles, maps, plans, and specifications prepared in connection with the report, must be submitted with the application.

(c) The executive director shall examine the application and the report and shall inspect the project area. The district shall, on request, supply the executive director with additional data and information necessary for an investigation of the application, the engineer's report, and the project.

(d) The executive director shall prepare a written report on the project and include suggestions, if any, for changes or improvements in the project. The executive director shall retain a copy of the report and send a copy of the report to both the commission and the district.

(e) The commission shall consider the application, the engineer's report, the executive director's report, and any other evidence allowed by commission rule to be considered in determining the feasibility of the project.

(f) The commission shall determine whether the project to be financed by the bonds is feasible and issue an order either approving or disapproving, as appropriate, the issuance of the bonds. The commission shall retain a copy of the order and send a copy of the order to the district.

(g) Notwithstanding any provision of this code to the contrary, the commission may approve the issuance of bonds of a district without the submission of plans and specifications of the improvements to be financed with the bonds. The commission may condition the approval on any terms or conditions considered appropriate by the commission.

(h) This section does not apply to a district if:

(1) the district's boundaries include one entire county;

- (2) the district was created by a special Act of the legislature and:
(A) the district is located entirely within one county;
(B) entirely within one or more home-rule municipalities;
(C) the total taxable value of the real property and improvements to the real property zoned by one or more home-rule municipalities for residential purposes and located within the district does not exceed 25 percent of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and
(D) the district was not required by law to obtain commission approval of its bonds before the effective date of this section;
(3) the district is a special water authority; or
(4) the district is governed by a board of directors appointed in whole or in part by the governor, a state agency, or the governing body or chief elected official of a municipality or county and does not provide water and sewer services to residential retail customers as its principal function.

Sec. 49.182. COMMISSION SUPERVISION OF PROJECTS AND IMPROVEMENTS. (a) During construction of projects and improvements approved by the commission under this subchapter, no substantial alterations may be made in the plans and specifications without the approval of the commission in accordance with commission rules.

(b) The executive director may inspect the improvements at any time during construction to determine if the project is being constructed in accordance with the plans and specifications approved by the commission.

(c) If the executive director finds that the project is not being constructed in accordance with the approved plans and specifications, the executive director shall give written notice immediately by certified mail to the district's manager and to each board member.

(d) If within 10 days after the notice is mailed the board does not take steps to ensure that the project is being constructed in accordance with the approved plans and specifications, the executive director shall give written notice of this fact to the attorney general.

(e) After receiving this notice, the attorney general may bring an action for injunctive relief or quo warranto proceedings against the directors. Venue for either suit is exclusively in a district court in Travis County.

Sec. 49.183. BOND SALES. (a) Except for refunding bonds, or bonds sold to a state or federal agency, bonds issued by a district shall be sold after advertising for and receiving competitive sealed bids and shall be awarded to the bidder whose bid produces the lowest net effective interest rate to the district.

(b) Except for refunding bonds, or bonds sold to a state or federal agency, after any bonds are finally approved and before they are sold by a district, the board shall publish an appropriate notice of the sale:

(1) at least one time not less than 10 days before the date of sale in a newspaper of general circulation in the county or counties in which the district is located; and

(2) at least one time in one or more recognized financial publications of general circulation in the state as approved by the state attorney general.

(c) If the district is issuing bonds and refunding bonds as one issue and if the initial principal amount of refunding bonds is 50 percent or more of the total initial principal amount of bonds being issued, for the purposes of this section, the issue shall be considered to be refunding bonds and competitive bids shall not be required.

(d) A district's bonds are negotiable instruments within the meaning and purposes of the Business & Commerce Code. A district's bonds may be issued and bear interest in accordance with Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes); Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes); the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes); and Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes). Except for this subsection, this section does not apply to special water authorities or districts defined in Section 49.181(h)(4).

(e) Subsections (a) and (b) do not apply to district bonds issued pursuant to Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

Sec. 49.184. APPROVAL OF BONDS BY ATTORNEY GENERAL; REGISTRATION OF BONDS. (a) Before bonds issued by a district are delivered to the purchasers, a certified copy of all proceedings relating to organization of the district for first bond issues and issuance of the bonds and other relevant information shall be sent to the attorney general.

(b) The attorney general shall carefully examine the bonds, with regard to the record and the constitution and laws of this state governing the issuance of bonds, and the attorney general shall officially approve and certify the bonds if he or she finds that they conform to the record and the constitution and laws of this state and are valid and binding obligations of the district.

(c) After the attorney general approves and certifies the bonds, the comptroller shall register them in a book kept for that purpose and shall record the certificate of the attorney general.

(d) After the approval and registration of the bonds by the comptroller, they shall be incontestable in any court or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes.

(e) A contract or lease may be submitted to the attorney general along with the bond records, and, if submitted, the approval by the attorney general of the bonds shall constitute an approval of the contract or lease and the contract or lease shall be incontestable.

Sec. 49.185. EXEMPTIONS. This subchapter shall not apply to districts engaged in the distribution and sale of electric energy to the public.

[Sections 49.186-49.190 reserved for expansion]

SUBCHAPTER G. AUDIT OF DISTRICTS

Sec. 49.191. DUTY TO AUDIT. (a) The board shall have the district's fiscal accounts and records audited annually at the expense of the district.

(b) In all areas of conflict, the provisions of this subchapter shall take precedence over all prior statutory enactments.

(c) The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy.

(d) The audit required by this section shall be completed within 120 days after the close of the district's fiscal year.

Sec. 49.192. FORM OF AUDIT. The executive director shall adopt accounting and auditing manuals and, except as otherwise provided by the manuals, the district audit shall be performed according to the generally accepted auditing standards adopted by the American Institute of Certified Public Accountants. Financial statements shall be prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants.

Sec. 49.193. FINANCIAL REPORTS. The district's depository, the district's treasurer, and the district's bookkeeper, if any, who receives or has control over any district funds shall keep a full and itemized account of district funds in its, his, or her possession. Such itemized accounts and records shall be available for audit.

Sec. 49.194. FILING OF AUDITS, AFFIDAVITS, AND FINANCIAL REPORTS. (a) After the board has approved the audit, it shall submit a copy of the report to the executive director for filing within 135 days after the close of the district's fiscal year.

(b) If the board refuses to approve the annual audit report, the board shall submit a copy of the report to the executive director for filing within 135 days after the close of the district's fiscal year, accompanied by a statement from the board explaining the reasons for its failure to approve the report.

(c) Copies of the audit, the annual financial dormancy affidavit, or annual financial report described in Sections 49.197 and 49.198 of this subchapter shall be filed annually in the office of the district.

(d) Each district shall file with the executive director an annual filing affidavit in a format prescribed by the executive director, executed by a duly authorized representative of the board, stating that all copies of the annual audit report, annual financial dormancy affidavit, or annual financial report have been filed under this section.

(e) The annual filing affidavit shall be submitted with the applicable annual document when it is submitted to the executive director for filing as prescribed by this subchapter.

(f) The executive director shall file with the attorney general the names of any districts that do not comply with the provisions of this subchapter.

Sec. 49.195. REVIEW BY EXECUTIVE DIRECTOR. (a) The executive director may review the audit report of each district.

(b) The commission may request that the state auditor assist in the establishment of standards and procedures for review of district audits by the executive director.

(c) If the executive director has any objections or determines any violations of generally accepted auditing standards or accounting principles, statutes, or board rules, or if the executive director has any recommendations, he or she shall notify the board and the district's auditor.

(d) Before the audit report may be accepted by the executive director as being in compliance with the provisions of this subchapter, the board and the auditor shall remedy objections and correct violations of which they have been notified by the executive director.

(e) If the audit report indicates that any penal law has been violated, the executive director shall notify the appropriate county or district attorney and the attorney general.

Sec. 49.196. ACCESS TO AND MAINTENANCE OF DISTRICT RECORDS. (a) The executive director shall have access to all vouchers, receipts, district fiscal and financial records, and other district records the executive director considers necessary.

(b) All district fiscal records shall be prepared on a timely basis and maintained in an orderly manner in accordance with generally accepted accounting principles. The fiscal records shall be available for public inspection during regular business hours. A district's fiscal records may be removed from the district's office for the purposes of recording its fiscal affairs and preparing an audit, during which time the fiscal records are under the control of the district's auditor.

Sec. 49.197. FINANCIALLY DORMANT DISTRICTS. (a) A financially dormant district is a district that had:

(1) \$500 or less of receipts from operations, tax assessments, loans, contributions, or any other sources during the calendar year;

(2) \$500 or less of disbursements of funds during the calendar year;

(3) no bonds or other long-term (more than one year) liabilities outstanding during the calendar year; and

(4) no cash or investments that exceeded \$5,000 at any time during the calendar year.

(b) A financially dormant district may elect to submit to the executive director a financial dormancy affidavit instead of complying with the audit requirements of Section 49.191.

(c) The annual financial dormancy affidavit shall be prepared in a format prescribed by the executive director and shall be submitted for filing by a duly authorized representative of the district.

(d) The affidavit must be filed annually on or before January 31 with the executive director until such time as the district becomes financially active and the board adopts a fiscal year; thereafter, the district shall file annual audit reports as prescribed by this subchapter.

(e) A district that becomes financially dormant after having been financially active shall be required to file annual financial dormancy affidavits on or before January 31, until the district is either dissolved or again becomes financially active.

(f) Districts governed by this section are subject to periodic audits by the executive director.

Sec. 49.198. AUDIT REPORT EXEMPTION. (a) A district that is not collecting taxes may elect to file annual financial reports with the executive director in lieu of the district's compliance with Section 49.191 provided:

(1) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;

(2) the district did not have gross receipts from operations, loans, or contributions in excess of \$100,000 during the fiscal period; and

(3) the district's cash and temporary investments were not in excess of \$100,000 at any time during the fiscal period.

(b) The annual financial report must be accompanied by an affidavit attesting to the accuracy and authenticity of the financial report signed by a duly authorized representative of the district.

(c) The annual financial report and affidavit in a format prescribed by the executive director must be on file with the executive director within 45 days after the close of the district's fiscal year.

(d) Districts governed by this section are subject to periodic audits by the executive director.

Sec. 49.199. POLICIES AND AUDITS OF DISTRICTS. (a) Subject to the law governing the district, the board shall adopt the following in writing:

(1) a code of ethics for district directors, officers, employees, and persons who are engaged in handling investments for the district;

(2) a policy relating to travel expenditures;

(3) a policy relating to district investments that ensures that:

(A) purchases and sales of investments are initiated by authorized individuals, conform to investment objectives and regulations, and are properly documented and approved; and

(B) periodic review is made of district investments to evaluate investment performance and security;

(4) policies and procedures for selection, monitoring, or review and evaluation of professional services;

(5) a uniform method of accounting and reporting for industrial development bonds and pollution control bonds that complies with requirements of the commission; and

(6) policies that ensure a better use of management information including:

(A) budgets for use in planning and controlling cost;

(B) an audit committee of the board; and

(C) uniform reporting requirements that use "Audits of State and Local Governmental Units" as a guide on audit working

papers and that use "Governmental Accounting and Financial Reporting Standards."

(b) The state auditor may audit the financial transactions of any district if the state auditor determines that the audit is necessary.

Sec. 49.200. REVIEW AND COMMENT ON BUDGET OF CERTAIN DISTRICTS. A district that provides wholesale potable water and wastewater services shall adopt a program that provides such wholesale customers an opportunity to review and comment on the district's annual budget that applies to their services before that budget is adopted by the board.

[Sections 49.201-49.210 reserved for expansion]

SUBCHAPTER H. POWERS AND DUTIES

Sec. 49.211. POWERS. (a) A district shall have the functions, powers, authority, rights, and duties that will permit accomplishment of the purposes for which it was created or the purposes authorized by the constitution, this code, or any other law.

(b) A district is authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all land, works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of its creation or the purposes authorized by this code or any other law.

Sec. 49.212. FEES AND CHARGES. (a) A district may adopt and enforce all necessary charges, fees, or rentals, in addition to taxes, for providing or making available any district facility or service.

(b) A district may require a deposit for any services or facilities furnished and the district may or may not provide that the deposit will bear interest.

(c) Subject to observance of the procedure appropriate to the circumstances, a district may discontinue any or all facilities or services to prevent an abuse or to enforce payment of an unpaid charge, fee, or rental due the district, including taxes that have been delinquent for not less than six months.

(d) Notwithstanding any provision of law to the contrary, a district that charges a fee that is an impact fee as described in Section 395.001(4), Local Government Code, must comply with Chapter 395, Local Government Code. A charge or fee by a district for construction, installation, or inspection of a tap or connection to district water, sanitary sewer, or drainage facilities, including all necessary service lines and meters, that (i) does not exceed three times the actual and reasonable costs to the district for such work or (ii) if made to a nontaxable entity, does not exceed the actual costs to the district for such work and for all facilities that are necessary to provide district services to such entity and that are financed or are to be financed in whole or in part by tax-supported bonds of the district, shall not be deemed or considered to be an impact fee under Chapter 395, Local Government Code.

Sec. 49.213. AUTHORITY TO ISSUE CONTRACTS. (a) A district may contract with a person or any public or private entity for the joint construction, financing, ownership, and operation of any works,

improvements, facilities, plants, equipment, and appliances necessary to accomplish any purpose or function permitted by a district, or a district may purchase an interest in any project used for any purpose or function permitted by a district.

(b) A district may enter into contracts with any person or any public or private entity in the performance of any purpose or function permitted by a district.

(c) A district may enter into contracts, which may be of unlimited duration, with persons or any public or private entities on the terms and conditions the board may consider desirable, fair, and advantageous for:

(1) the purchase or sale of water;

(2) the collection, transportation, treatment, and disposal of its domestic, industrial, and communal wastes or the collection, transportation, treatment, and disposal of domestic, industrial, and communal wastes of other persons;

(3) the gathering, diverting, and control of local storm water, or other local harmful excesses of water;

(4) the continuing and orderly development of the land and property within the district through the purchase, construction, or installation of works, improvements, facilities, plants, equipment, and appliances that the district may otherwise be empowered and authorized to do or perform so that, to the greatest extent reasonably possible, considering sound engineering and economic practices, all of the land and property may be placed in a position to ultimately receive the services of the works, improvements, plants, facilities, equipment, and appliances;

(5) the maintenance and operation of any works, improvements, facilities, plants, equipment, and appliances of the district or of another person or public or private entity;

(6) the collection, treatment, and disposal of municipal solid wastes;

(7) the exercise of any other rights, powers, and duties granted to a district.

Sec. 49.214. CONFLICTS OF INTEREST IN CONTRACTS. The provisions of Chapter 171, Local Government Code, shall apply to the award of district contracts.

Sec. 49.215. SERVICE TO AREAS OUTSIDE THE DISTRICT. (a) A district may purchase, construct, acquire, own, operate, repair, improve, or extend all works, improvements, facilities, plants, equipment, and appliances necessary to provide any services or facilities authorized to be provided by the district to areas contiguous to or in the vicinity of the district provided the district does not duplicate a service or facility of another public entity. A district providing potable water and sewer utility services to household users shall not provide services or facilities to serve areas outside the district that are also within the corporate limits of a city without securing a resolution or ordinance of the city granting consent for the district to serve the area within the city.

(b) To secure money for this purpose, a district is authorized to issue and sell negotiable bonds and notes payable from the levy and collection of ad valorem taxes on all taxable property within the district or from all or any designated part of the revenues received from the operation of the district's works, improvements, facilities, plants, equipment, and appliances or from a combination of taxes and revenues.

(c) Any bonds and notes may be issued upon the terms and conditions set forth in this code.

(d) A district shall not be required to hold a certificate of convenience and necessity as a precondition for providing retail water or sewer service to any customer or service area, notwithstanding the fact that such customer or service area may be located either within or outside the boundaries of the district or has previously received water or sewer service from an entity required by law to hold a certificate of convenience and necessity as a precondition for such service. This subsection does not authorize a district to provide services within an area for which a retail public utility holds a certificate of convenience and necessity or within the boundaries of another district without that district's consent, unless the district has a valid certificate of convenience and necessity to provide services to that area.

(e) A district is authorized to establish, maintain, revise, charge, and collect the rates, fees, rentals, tolls, or other charges for the use, services, and facilities that provide service to areas outside the district that are considered necessary and may be higher than those charged for comparable service to users within the district.

(f) The rates, fees, rentals, tolls, or other charges shall be at least sufficient to meet the expense of operating and maintaining the services and facilities for a water and sanitary sewer system serving areas outside the district and to pay the principal of and interest and redemption price on bonds issued to purchase, construct, acquire, own, operate, repair, improve, or extend the services or facilities.

Sec. 49.216. ENFORCEMENT BY PEACE OFFICERS. (a) A district may contract for or employ its own peace officers with power to make arrests when necessary to prevent or abate the commission of:

(1) any offense against the rules of the district when the offense or threatened offense occurs on any land, water, or easement owned or controlled by the district;

(2) any offense involving injury or detriment to any property owned or controlled by the district; and

(3) any offense against the laws of the state.

(b) A district may appoint reserve peace officers who may be called to serve as peace officers by the district during the actual discharge of their official duties.

(c) A reserve peace officer serves at the discretion of the district and may be called into service if the district considers it necessary to have additional officers to preserve the peace in or enforce the law of the district.

(d) A reserve peace officer on active duty and actively engaged in assigned duties has the same rights, privileges, and duties as any other peace officer of the district.

(e) Any peace officer, before beginning to perform any duties and at the time of appointment, must take an oath and execute a bond conditioned on faithful performance of such officer's duties in the amount of \$1,000 payable to the district. The oath and the bond shall be filed in the district office.

Sec. 49.217. OPERATION OF CERTAIN MOTOR VEHICLES ON OR NEAR PUBLIC FACILITIES. (a) In this section, "motor vehicle" means a self-propelled device in, upon, or by which a person or property is or may be transported or drawn on a road or highway.

(b) Except as provided in Subsections (c) and (d), a person may not operate a motor vehicle on a levee, in a drainage ditch, or on land adjacent to a levee, canal, ditch, exposed conduit, pipeline, pumping plant, storm water facility, or other facility for the transmission, storage, treatment, or distribution of water, sewage, or storm water owned or controlled by a district.

(c) A district may authorize the use of motor vehicles on land that it owns or controls by posting signs on the property.

(d) This section does not prohibit a person from:

(1) driving on a public road or highway; or

(2) operating a motor vehicle used for repair or maintenance of public water, sewer, or storm water facilities.

(e) A person who operates a motor vehicle in violation of Subsection (b) commits an offense. An offense under this section is a Class C misdemeanor, except that if a person has been convicted of an offense under this section, a subsequent offense is a Class B misdemeanor.

Sec. 49.218. ACQUISITION OF PROPERTY. (a) A district or a water supply corporation may acquire land, materials, waste grounds, easements, rights-of-way, equipment, contract or permit rights or interests, and other property, real or personal, considered necessary for the purpose of accomplishing any one or more of the district's or water supply corporation's purposes provided in this code or in any other law.

(b) A district or water supply corporation shall have the right to acquire property by gift, grant, or purchase and the right to acquire property shall include property considered necessary for the construction, improvement, extension, enlargement, operation, or maintenance of the plants, works, improvements, facilities, equipment, or appliances of a district or a water supply corporation.

(c) A district or water supply corporation may acquire either the fee simple title to or an easement on all land, both public and private, either inside or outside its boundaries and may acquire the title to or an easement on property other than land held in fee.

(d) A district or water supply corporation may also lease property from others for its use on such terms and conditions as the board of the district or the board of directors of the water supply corporation may determine to be advantageous.

Sec. 49.219. ACQUISITION OF EXISTING FACILITIES. Any district may acquire by agreement all or any part of existing water, sanitary sewer, or drainage systems of any water supply corporation, including works, improvements, facilities, plants, equipment, appliances, contract rights, and other assets and rights that are completed, partially completed, or under construction, and in connection therewith a district may assume all or any part of the contracts, indebtedness, or obligations of the corporation related to said systems, including any contracts, indebtedness, or obligations related to or payable from the revenues of said systems, and may perform all or any part of the obligations of said corporation in the same manner and to the same extent that any other purchaser or assignee could be bound on any such contracts, indebtedness, or obligations. Before assuming any indebtedness or obligations of such corporation related to any such system, a district other than a special water authority shall obtain the approval of the commission of such assumption.

Sec. 49.220. RIGHT TO USE EXISTING RIGHTS-OF-WAY. All districts or water supply corporations are given rights-of-way, within, along, under, and across all public, state, county, city, town, or village roads, highways, and rights-of-way and other public rights-of-way without the requirement for surety bond or security; provided, however, that the entity having jurisdiction over such roads, highways, and rights-of-way may require indemnification. A district or water supply corporation shall not proceed with any action to change, alter, or damage a portion of the state highway system without having first obtained the written consent of the Texas Department of Transportation, and the placement of any facility of a district or water supply corporation within state highway right-of-way shall be subject to department regulation.

Sec. 49.221. RIGHT TO ENTER LAND. (a) The directors, engineers, attorneys, agents, operators, and employees of a district or water supply corporation may go on any land to inspect, make surveys, or perform tests to determine the condition, value, and usability of the property, with reference to the proposed location of works, improvements, plants, facilities, equipment, or appliances. The cost of restoration shall be borne by the district or the water supply corporation.

(b) District employees and agents are entitled to enter any public or private property within the boundaries of the district or adjacent to any reservoir or other property owned by the district at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the district. District employees or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.

Sec. 49.222. EMINENT DOMAIN. (a) A district or water supply corporation may acquire by condemnation any land, easements, or other property inside or outside the district boundaries, or the boundaries of the

certificated service area for a water supply corporation, necessary for water, sanitary sewer, storm drainage, or flood drainage or control purposes or for any other of its projects or purposes, and may elect to condemn either the fee simple title or a lesser property interest.

(b) The right of eminent domain shall be exercised in the manner provided in Chapter 21, Property Code, except that a district or a water supply corporation shall not be required to give bond for appeal or bond for costs in any condemnation suit or other suit to which it is a party and shall not be required to deposit more than the amount of any award in any suit.

(c) The power of eminent domain may not be used for the condemnation of land for the purpose of acquiring rights to underground water or of water or water rights.

Sec. 49.223. COSTS OF RELOCATION OF PROPERTY. (a) In the event that the district or the water supply corporation, in the exercise of the power of eminent domain or power of relocation, or any other power, makes necessary the relocation, raising, lowering, rerouting, or change in grade of or alteration in construction of any road, bridge, highway, railroad, electric transmission line, telegraph, or telephone properties, facilities, or pipelines, all necessary relocations, raising, lowering, rerouting, or change in grade or alteration of construction shall be done at the sole expense of the district or the water supply corporation unless otherwise agreed to in writing. Such relocation shall be accomplished in a timely manner so that the project of the district or the water supply corporation is not delayed.

(b) "Sole expense" means the actual cost of the relocation, raising, lowering, rerouting, or change in grade or alteration of construction and providing comparable replacement without enhancing the facilities after deducting from it the net salvage value derived from the old facility.

Sec. 49.224. POWER TO CONDEMN CEMETERIES. (a) The use of land for the construction of district dams and creation of lakes and reservoirs for the purpose of conservation and development of the natural resources of this state is hereby declared to be superior to all other uses; and for these purposes only a district has the power of eminent domain to acquire land, improvements, and other property owned and held for cemeteries or burial places necessary for the construction of a dam or that lies inside the area to be covered by the lake or reservoir or within 300 feet of the high water line of the lake or reservoir.

(b) Except as otherwise provided by this subchapter, the procedure in condemnation proceedings is governed by Chapter 21, Property Code.

(c) Notice shall be served on the title owner of the land on which the cemetery is situated as provided in Chapter 21, Property Code. General notice to persons having relatives interred in the cemetery shall be given by publication for two consecutive weeks in a newspaper circulated in the county in which the cemetery is situated.

(d) The measure of damages in these eminent domain proceedings shall be assessed as in other condemnation cases. An additional amount

of damages shall be assessed to cover the cost of removing and reintering the bodies interred in the cemetery or burial place and the cost of removing and resetting the monuments or markers erected at the graves.

(e) The additional assessment shall be deposited in the registry of the county court and disbursed only for the purpose of removing and reintering the bodies in other cemeteries in Texas agreed on between the district and the relatives of the deceased persons.

(f) If in any case the district and the relatives of a deceased person cannot agree within 30 days on a cemetery for reinterment, or no relatives appear within that time, then the county judge shall designate the cemetery for reinterment.

(g) Instead of depositing the additional assessment in the registry of the court, the district may execute a bond sufficient to cover costs of removing and reintering the bodies. The bond shall be payable to and approved by the county judge and conditioned that the bodies will be removed and reinterred as provided by this section.

Sec. 49.225. LEASES. A district may lease any of its property, real or personal, to any person. The lease may contain the terms and provisions that the board determines to be advantageous to the district.

Sec. 49.226. SALE OR EXCHANGE OF SURPLUS LAND OR PERSONAL PROPERTY. (a) Any land, interest in land, or personal property owned by the district which is found by the board to be surplus and is not needed by the district may be sold under order of the board either by public or private sale, or the land, interest in land, or personal property may be exchanged for other land, interest in land, or personal property needed by the district. Except as provided in Subsection (b), land, interest in land, or personal property must be exchanged for like fair market value, which value may be determined by the district.

(b) Any property dedicated to or acquired by the district without expending district funds may be abandoned or released to the original grantor, the grantor's heirs, assigns, executors, or successors upon terms and conditions deemed necessary or advantageous to the district and without receiving compensation for such abandonment or release. District property may also be abandoned, released, exchanged, or transferred to another district, municipality, county, countywide agency, or authority upon terms and conditions deemed necessary or advantageous to the district. Narrow strips of property resulting from boundary or surveying conflicts or similar causes, or from insubstantial encroachments by abutting property owners, may be abandoned, released, exchanged, or transferred to such abutting owners upon terms and conditions deemed necessary or advantageous to the district. Chapter 272, Local Government Code, shall not apply to this subsection.

(c) Before either a public or a private sale of real property not required by the district, the district shall give notice of the intent to sell by publishing notice once a week for two consecutive weeks in one or more newspapers with general circulation in the district.

(d) If the district has outstanding bonds secured by a pledge of tax revenues, the proceeds of the sale of property not required by the district

shall be applied to retire outstanding bonds of the district when required by the district's applicable bond resolutions.

(e) If the district does not have any outstanding bonds, the proceeds derived from the sale of the personal property or land not required by the district may be used for any lawful purpose.

Sec. 49.227. AUTHORITY TO ACT JOINTLY. A district or water supply corporation may act jointly with any other person or entity, private or public, whether within the State of Texas or the United States, in the performance of any of the powers and duties permitted by this code or any other laws.

Sec. 49.228. DAMAGE TO PROPERTY. A person who wilfully destroys, defaces, damages, or interferes with district or water supply corporation property is guilty of a Class B misdemeanor.

Sec. 49.229. GRANTS AND GIFTS. A district may accept grants, gratuities, advances, and loans in any form from any source approved by the board, including any governmental entity, any private or public corporation, and any other person and may make and enter into contracts, agreements, and covenants the board considers appropriate in connection with acceptance of grants, gratuities, advances, and loans.

Sec. 49.230. AREA-WIDE WASTEWATER TREATMENT. The powers and duties conferred on the district are granted subject to the policy of the state to encourage the development and use of integrated area-wide wastewater collection, treatment, and disposal systems to serve the wastewater disposal needs of the citizens of the state whenever economically feasible and competitive to do so, it being an objective of the policy to avoid the economic burden to the people and the impact on the quality of the water in the state that result from the construction and operation of numerous small wastewater collection, treatment, and disposal facilities to serve an area when an integrated area-wide wastewater collection, treatment, and disposal system for the area can be reasonably provided.

Sec. 49.231. STANDBY FEES. (a) In this section:

(1) "Standby fee" means a charge, other than a tax, imposed on undeveloped property for the availability of potable water, sanitary sewer, or drainage facilities and services.

(2) "Undeveloped property" means a tract, lot, or reserve in the district to which no potable water, sanitary sewer, or drainage connections have been made for which:

(A) water, sanitary sewer, or drainage facilities and services are available;

(B) water supply, wastewater treatment plant capacity, or drainage capacity sufficient to serve the property is available; or

(C) major water supply lines, wastewater collection lines, or drainage facilities with capacity sufficient to serve the property are available.

(b) A district that proposes to provide or actually provides retail potable water or sewer utility services, or drainage services as the principal function of the district, may, with the approval of the commission, adopt

and impose on the owners of undeveloped property in the district a standby fee in addition to taxes levied by the district. A district may not impose a standby fee for debt service purposes on undeveloped property unless the facilities and services available to the property have been financed by the district; however, a district may impose a standby fee for operating and maintaining facilities that it has not financed. The district may impose standby fees in different amounts to fairly reflect the level and type of services and facilities available to serve different property. The intent of the standby fee is to distribute a fair portion of the cost burden for operating and maintaining the facilities and for financing capital costs of the facilities to owners of property who have not constructed improvements but have potable water, sewer, or drainage capacity available. Any revenues collected from the standby fees shall be used to pay operation and maintenance expenses, to pay debt service on the bonds, or both.

(c) If a district described in Subsection (b) desires to adopt and impose a standby fee, the district shall submit to the commission an application for authority to adopt and impose the standby fee. The application must describe the tracts of undeveloped property in the district and state the amount of the proposed fee.

(d) The executive director shall examine an application submitted under Subsection (c) and shall investigate the financial condition of the district, including the district's assets, liabilities, sources of revenue, level of utility service rates, and level of debt service and maintenance tax rates. On the request of the executive director, the district shall submit any information the executive director considers relevant to the examination and investigation. The executive director shall prepare a written report on the application and the district's financial condition, retain a copy of the report, and send a copy of the report to the commission and the district.

(e) The commission shall hold a hearing on an application submitted under Subsection (c). Notice of the hearing shall be published in a newspaper of general circulation in the county or counties in which the district is located once a week for two consecutive weeks. The first publication must occur not later than the 30th day before the date of the hearing. The district shall send, not later than the 30th day before the date of the hearing, notice of the hearing by certified mail, return receipt requested, to each owner of undeveloped property in the district. On the date the application is filed, the district's tax assessor and collector shall certify to the district the names of the persons owning undeveloped land in the district as reflected by the most recent certified tax roll of the district. Notice of the hearing must be sent by certified mail, return receipt requested, to each mortgagee of record that has submitted a written request to be informed of any hearings. To be effective, the written request must be received by the district not later than the 60th day before the date of the hearing. The written request for notice must include the name and address of the mortgagee, the name of the property owner in the district, and a brief property description.

(f) The commission shall consider the application, the report of the executive director, and any other evidence allowed by commission rule.

The commission may approve the application only if the commission finds that the fee is necessary to maintain the financial integrity and stability of the district and fairly allocates the costs of district facilities and services among property owners of the district.

(g) After a hearing on an application under Subsection (e), the commission shall issue an order approving or disapproving the application. The commission shall retain a copy of the order and send a copy of the order to the district.

(h) The commission may approve the adoption and imposition of the standby fee for a period of not more than three years. The imposition of a standby fee may be renewed for additional periods of not more than three years each in the same manner provided in this section for initial approval of the standby fee.

(i) If approved by the commission, the board by resolution or order may impose an annual standby fee on undeveloped land in the district.

(j) The board may:

(1) charge interest, at the rate of one percent a month, on a standby fee not paid in a timely manner in accordance with the resolution or order imposing the standby fee; and

(2) refuse to provide potable water, sanitary sewer, or drainage service to the property for which the fee was assessed until all delinquent standby fees on the property and interest on those fees are fully paid.

(k) A standby fee imposed under this section is a personal obligation of the person owning the undeveloped property on January 1 of the year for which the fee is assessed. A person is not relieved of the obligation on transfer of title to the property. On January 1 of each year, a lien attaches to undeveloped property to secure payment of any standby fee imposed under this section and the interest, if any, on the fee. The lien has the same priority as a lien for taxes of the district.

(l) If a standby fee imposed under this section is not paid in a timely manner, a district may file suit to foreclose the lien securing payment of the fee and interest or to enforce the personal obligation for the fee and interest, or both. The district may recover, in addition to the fee and interest, reasonable costs, including attorney's fees, incurred by the district in enforcing the lien or obligation not to exceed 20 percent of the delinquent fee and interest. A suit authorized by this subsection must be filed not later than the fourth anniversary of the date the fee became due. A fee delinquent for more than four years and interest on the fee are considered paid unless a suit is filed before the expiration of the four-year period.

(m) Chapter 395, Local Government Code, does not apply to a standby fee imposed under this section.

(n) For purposes of title insurance policies issued under the authority of Chapter 9, Insurance Code, standby fees are considered taxes.

Sec. 49.232. LABORATORY SERVICES. A district may contract with any person, within or without the boundaries of the district, to provide or receive laboratory services related to environmental, health, or drinking water testing.

[Sections 49.233-49.270 reserved for expansion]

SUBCHAPTER I. CONSTRUCTION CONTRACTS

Sec. 49.271. CONTRACTS FOR CONSTRUCTION WORK. (a) Any contract made by the board for construction work shall conform to the provisions of this chapter.

(b) The contract shall contain, incorporate by reference, or have attached to it the specifications, plans, and details for work included in the contract. All work shall be done in accordance with these plans and specifications and any authorized change orders under the supervision of the board or its designee.

(c) The district may adopt minimum criteria for the qualifications of bidders on its construction contracts and for sureties issuing payment and performance bonds. For contracts over \$25,000, the district shall require a person who bids to submit a certified or cashier's check on a responsible bank in the state equal to at least two percent of the total amount of the bid, or a bid bond of at least two percent of the total amount of the bid issued by a surety legally authorized to do business in this state, as a good faith deposit to ensure execution of the contract. If the successful bidder fails or refuses to enter into a proper contract with the district, or fails or refuses to furnish the bond required by law, the bidder forfeits the deposit.

(d) The district may also require attendance by a principal of each prospective bidder at mandatory pre-bid conferences and may make any reasonable additional requirements regarding the taking of bids the district may deem appropriate in order to obtain competitive bids from responsible contractors and to minimize contract disputes.

Sec. 49.272. REPORTS FURNISHED TO PROSPECTIVE BIDDERS. The board shall furnish to any person who desires to bid on construction work, and who makes a request in writing, a copy of the engineer's report or plans and specifications showing the details of the work to be done. The board may charge for each copy of the engineer's report or plans and specifications an amount sufficient to cover the cost of making the copy.

Sec. 49.273. CONSTRUCTION CONTRACT AWARD. (a) The board shall contract for construction in accordance with this section. The bidding documents, plans, specifications, and other data needed to bid on the project must be available at the time of the first advertisement and the advertisement shall state the location at which these documents may be reviewed.

(b) A construction contract may cover all the work to be provided by the district or the various elements of the work may be segregated for the purpose of receiving bids and awarding contracts. A contract may provide that the work will be constructed in stages over a period of years.

(c) A construction contract may provide for the payment of a total sum that is the completed cost of the work or may be based on bids to cover cost of units of the various elements entering into the work as estimated and approximately specified by the district's engineers, or a contract may be let and awarded in any other form or composite of forms and to any responsible person or persons that, in the board's judgment, will be most

advantageous to the district and result in the best and most economical completion of the district's proposed plants, improvements, facilities, works, equipment, and appliances.

(d) For construction contracts for \$25,000 or more, the board shall advertise the letting of the contract, including the general conditions, time, and place of opening of sealed bids. The notice shall be published in one or more newspapers circulated in each county in which part of the district is located. If one newspaper meets both of these requirements, publication in such newspaper is sufficient. If there are more than four counties in the district, notice may be published in any newspaper with general circulation in the district. The notice shall be published once a week for three consecutive weeks before the date that the bids are opened, and the first publication shall be not later than the 21st day before the date of the opening of the sealed bids.

(e) For construction contracts for \$15,000 or more but less than \$25,000, the board shall solicit written competitive bids on uniform written specifications from at least three bidders.

(f) For construction contracts of less than \$15,000, the board is not required to advertise or seek competitive bids.

(g) The board may not subdivide work to avoid the advertising requirements specified in this section.

(h) The board may not accept bids that include substituted items unless the substituted items were included in the original bid proposal and all bidders had the opportunity to bid on the substituted items or unless notice is given to all bidders at a mandatory pre-bid conference.

(i) Change orders to contracts may be issued only as a result of unanticipated conditions encountered during construction or changes in regulatory criteria or to facilitate project coordination with other political entities.

(j) The provisions of this subchapter do not apply to contracts for personal or professional services or for a utility service operator or to contracts made by a district engaged in the distribution and sale of electric energy to the public.

(k) The provisions of this subchapter do not apply to high technology procurements. The provisions of Sections 252.021(a) and 252.042, Local Government Code, shall apply to high technology procurements.

Sec. 49.274. EMERGENCY APPROVAL OF DISTRICT PROJECTS. If a district experiences an emergency condition that may create a serious health hazard or unreasonable economic loss to the district that requires immediate corrective action, the district may negotiate limited duration contracts to make the necessary repairs. The district shall submit to the executive director details describing the specific serious health hazard or unreasonable economic loss as soon as practicable following the issuance of the contracts. Whenever possible, the district should obtain prior approval of the executive director before authorizing the contract, but failure to obtain prior approval shall not void the contract. This section does not apply to special water authorities.

Sec. 49.275. CONTRACTOR'S BOND. Any person, firm, partnership, or corporation to whom a contract is let must give good and sufficient performance and payment bonds in accordance with Chapter 2253, Government Code, and any minimum criteria for sureties issuing such bonds adopted by a district in accordance with Section 49.271.

Sec. 49.276. PAYMENT FOR CONSTRUCTION WORK. (a) The district shall pay the contract price of construction contracts only as provided in this section.

(b) The district will make progress payments under construction contracts monthly as the work proceeds, or at more frequent intervals as determined by the board or its designee, on estimates approved by the board or its designee.

(c) If requested by the district or district engineer, the contractor shall furnish a breakdown of the total contract price showing the amount included for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates, the district engineer may authorize material delivered on the site and preparatory work done to be considered if the consideration is specifically authorized by the contract and if the contractor furnishes satisfactory evidence that he has acquired title to the material and that it will be utilized on the work covered by the contract.

(d) In making progress payments, 10 percent of the estimated amount shall be retained until final completion and acceptance of the contract work. However, if the board at any time after 50 percent of the work has been completed finds that satisfactory progress is being made, it may authorize any of the remaining progress payments to be made in full. Also, if the work is substantially complete, the board, if it finds the amount retained to be in excess of the amount adequate for the protection of the district, at its discretion may release to the contractor all or a portion of the excess amount. The district is not obligated to pay interest on amounts retained except as provided herein. The district shall not be obligated to pay any interest on the 10 percent retainage held on the first 50 percent of work completed. If the district holds any retainage on the remaining 50 percent of the work completed, the district shall pay interest on such retainage from the date the retainage is withheld to the date of payment to the contractor. The interest rate to be paid on such retainage shall be the rate of interest paid by the district's depository bank on interest bearing accounts of similar amounts during the period of time interest accrues as provided herein.

(e) On completion and acceptance of each separate project, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made without retention of a percentage.

Sec. 49.277. INSPECTION OF AND REPORTS ON CONSTRUCTION WORK. (a) The board shall have control of construction work being done for the district under contract to determine whether or not the contract is being fulfilled and shall have the construction work inspected by the district engineer or other designated person.

(b) During the progress of the construction work, the district engineer or other designated person shall submit to the board detailed written reports showing whether or not the contractor is complying with the contract, and when the work is completed the district engineer shall submit to the board a final detailed report including as-built plans of the facilities showing whether or not the contractor has fully complied with the contract.

[Sections 49.278-49.300 reserved for expansion]

SUBCHAPTER J. ANNEXATION OR EXCLUSION OF LAND

Sec. 49.301. ADDING LAND BY PETITION OF LANDOWNER.

(a) In addition to any other provision provided by law, the owner or owners of land whether or not contiguous to the district or otherwise may file with the board a petition requesting that there be included in the district the land described in the petition by metes and bounds or by lot and block number if there is a recorded plat of the area to be included in the district. The petition may request the district to condition the annexation on certain conditions, including the voter authorization of bonds to serve the area to be annexed.

(b) If the district has bonds, notes, or other obligations outstanding or bonds payable in whole or in part from taxes that have been voted but are unissued, the board may require the petitioner or petitioners to assume their share of the outstanding bonds, notes, or other obligations and the voted but unissued tax bonds of the district and authorize the board to levy a tax on their property in each year while any of the bonds, notes, or other obligations payable in whole or in part from taxation are outstanding to pay their share of the indebtedness.

(c) The petition of the landowner to add land to the district shall be signed and executed in the manner provided by law for the conveyance of real estate.

(d) The board shall hear and consider the petition and may add to the district the land described in the petition if it is feasible, practicable, and to the advantage of the district and if the district's system and other improvements of the district are sufficient or will be sufficient to supply the added land without injuring land already in the district.

(e) If the district has bonds payable in whole or in part from taxation that are voted but unissued at the time of an annexation and the petitioners assume the bonds and authorize the district to levy a tax on their property to pay the bonds, then the board may issue the voted but unissued bonds even though the boundaries of the district have been altered since the authorization of the bonds.

(f) Granted petitions shall be filed for record and shall be recorded in the office of the county clerk of the county or counties in which the added land is located.

Sec. 49.302. ADDING LAND BY PETITION OF LESS THAN ALL THE LANDOWNERS. (a) In addition to the method of adding land to a district described in Section 49.301 of this subchapter, defined areas of land, whether or not they are contiguous to the district, may be annexed to the district in the manner set forth in this section.

(b) A petition requesting the annexation of a defined area signed by a majority in value of the owners of land in the defined area, as shown by the tax rolls of the county or counties in which such area is located, or signed by 50 landowners if the number of landowners is more than 50, shall describe the land by metes and bounds or by lot and block number if there is a recorded plat of the area and shall be filed with the secretary of the board.

(c) It shall be the duty of the board to pass an order fixing a time and place at which the petition for annexation shall be heard that shall not be less than 30 days from the day of the order calling the hearing.

(d) The secretary of the board shall issue a notice setting forth the time and place of the hearing and describing the area proposed to be annexed. Notice of the hearing shall be given by posting copies of the notice in three public places in the district and in one public place in the area proposed to be annexed for at least 14 days before the day of the hearing and by publishing a copy of the notice in a newspaper of general circulation in the county or counties in which the area proposed to be annexed is located one time at least 14 days before the day of the hearing.

(e) If upon the hearing of the petition it is found by the board that the proposed annexation of the area to the district is feasible, practicable, and to the advantage of the district and if the district's system and other improvements of the district are sufficient or will be sufficient to supply the added land without injuring land already in the district, then the board, by order entered in its minutes, may receive the proposed area as an addition to and to become a part of the district. The order adding the proposed territory to the district need not include all of the land described in the petition if at the hearing a modification or change is found necessary or desirable by the board.

(f) A copy of the order annexing land to the district, signed by a majority of the members of the board and attested by the secretary of the board, shall be filed and recorded in the deed records of the county or counties in which the district is located if the land is finally annexed to the district.

(g) After the order is recorded the area shall be a component part of the district.

(h) The annexed area shall bear its pro rata share of all bonds, notes, or other obligations or taxes that may be owed, contracted, or authorized by the district to which it has been added.

(i) Before the added area shall be subject to all or any part of the bonds, notes, obligations, or taxes created before the annexation of the area to the district, the board shall order an election to be held in the district, as enlarged by reason of the annexation of the area, on the question of the assumption of the bonds, notes, obligations, and taxes by the annexed area.

(j) At the same election, the board may also submit a proposition on the question of whether the annexed area should assume its part of the bonds of the district payable in whole or in part from taxes that have been voted previously but not yet issued or sold and the levy of an ad valorem tax on all taxable property within the area annexed along with a tax on the rest of the district for the payment of the bonds.

(k) If the election results favorably, the district shall be authorized to issue its voted but unissued tax bonds even though the boundaries of the district have been changed since the original election approving the bonds.

(l) At the election called for the purpose of determining whether the annexed area shall assume the bonds, notes, or other obligations or taxes of the district, the board in a separate proposition may also submit the question of whether the board should be authorized to issue bonds payable in whole or in part from taxes to provide service to the area annexed.

(m) In the event that the district has bonds, notes, or obligations or taxes that may be owed, contracted, or authorized at the time an area is annexed or if the district has voted but unissued bonds payable in whole or in part from taxes at the time of an annexation, the board may provide in its order annexing an area to the district that the annexation will not be complete or final unless the indebtedness, tax or bond, note, or other obligation assumption election results favorably to the assumption of the district's outstanding bonds, notes, or other obligations and voted but unissued bonds.

(n) If the board elects to submit the question of whether the board should be authorized to issue bonds to provide service to the area annexed, the board may also provide in its order annexing an area to the district that the annexation will not be complete unless the election results favorably to the issuance of bonds to serve the annexed area.

(o) Whenever an election is ordered to be held in the district for the purpose of the assumption of bonds, notes, or other obligations or taxes or the assumption of voted but unissued bonds by reason of the annexation of any area, then the election shall be held and notice given as provided for bond elections held by the district.

(p) The district has the same right and duty to furnish service to the annexed land that it previously had to furnish service to other land in the district and the board shall endeavor to serve all land in the district without discrimination.

Sec. 49.303. EXCLUDING LAND FROM DISTRICT. (a) Before a district orders an election for the authorization of bonds payable in whole or in part from taxes, the board may, on its own motion, call a hearing on the question of the exclusion of land from the district under the provisions of this section and Sections 49.304-49.307, if the exclusions are practicable, just, or desirable.

(b) The board must call a hearing on the exclusion of land or other property from the district on the written petition of any landowner or property owner in the district filed with the secretary of the board before the first election on the question of whether bonds should be issued payable in whole or in part from taxes is ordered.

(c) The board may hold a hearing on the exclusion of land or other property from the district if the district has not issued bonds payable in whole or in part from taxes, and if a landowner or property owner submits a signed petition to the secretary of the board evidencing the consent of the owners of a majority of the acreage proposed to be excluded and a majority of the taxable property in the district, as reflected by the most recent certified tax roll of the district.

(d) A district that has previously held an election at which approval was given for the issuance of bonds payable in whole or in part from taxes may not rely on that election for the issuance of the bonds if after the bond election, but before the bonds are issued, land is excluded from the district as provided by this subchapter. The board must call and hold another bond election and receive voter approval as provided by this subchapter before issuing those bonds.

Sec. 49.304. HEARING TO ANNOUNCE PROPOSED EXCLUSIONS AND TO RECEIVE PETITIONS. (a) If the board determines that an exclusion hearing should be held or if a written petition requesting an exclusion hearing is filed with the secretary of the board as provided in Section 49.303, the board shall give notice of the time and place of a hearing to announce its own conclusions relating to land or other property to be excluded and to receive petitions for exclusion of land or other property.

(b) The board shall publish notice of the hearing once a week for two consecutive weeks in one or more newspapers with general circulation in the district. The first publication shall appear at least 14 days before the day of the hearing.

(c) The notice shall advise all interested property owners of their right to present petitions for exclusions of land or other property and to offer evidence in support of the petitions and their right to contest any proposed exclusion based on either a petition or the board's own conclusions and to offer evidence in support of the contest.

Sec. 49.305. PETITION. (a) A petition for exclusion of land must accurately describe by metes and bounds or lot and block number the land to be excluded. A petition for exclusion of other property must describe the property to be excluded.

(b) A petition for exclusion shall be filed with the district at least seven days before the hearing and shall state clearly the particular grounds on which the exclusion is sought. Only the stated grounds shall be considered.

Sec. 49.306. GROUNDS FOR EXCLUSION. Exclusions from the district may be made on the grounds that:

(1) to retain certain land or other property within the district's taxing power would be arbitrary and unnecessary to conserve the public welfare, would impair or destroy the value of the property desired to be excluded, and would constitute the arbitrary imposition of a confiscatory burden;

(2) to retain any given land or other property in the district and to extend to it, either presently or in the future, the benefits, service, or protection of the district's facilities would create an undue and uneconomical burden on the remainder of the district; or

(3) the land desired to be excluded cannot be bettered as to conditions of living and health, provided with water or sewer service, protected from flood, drained, freed from interruption of traffic caused by excess of water on the roads, highways, or other means of transportation serving the land, or otherwise benefited by the district's proposed improvements.

Sec. 49.307. HEARING AND ORDER EXCLUDING LAND. (a) The board may adjourn the hearing from one day to another and until all persons desiring to be heard are heard. The board immediately shall specifically describe all property it proposes to exclude on its own motion and shall hear first any protests and evidence against exclusions proposed on the board's own motion.

(b) After considering all engineering data and other evidence presented to it, the board shall determine whether the facts disclose the affirmative of the propositions stated in Subdivision (1) or (2) or, if appropriate, in Subdivision (3) of Section 49.306. If the affirmative exists, the board shall enter an order excluding all land or other property falling within the conditions defined by the respective subdivisions and shall redefine in the order the boundaries of the district to embrace all land not excluded. A copy of the order excluding land and redefining the boundaries of the district shall be filed in the deed records of the county or counties in which the district is situated.

Sec. 49.308. SUIT TO REVIEW EXCLUSION. (a) Any person owning an interest in land affected by the order may file a petition within 20 days after the effective date of the order to review, set aside, modify, or suspend the order.

(b) The venue in any action shall be in any district court that has jurisdiction in the county in which the district is located. If the district includes land in more than one county, the venue shall be in the district court having jurisdiction in the county in which the major portion of the acreage of the land sought to be excluded from the district is located.

(c) A person may appeal from the judgment or order of a district court in a suit brought under the provisions of this section to the court of civil appeals and supreme court as in other civil cases in which the district court has original jurisdiction. The appeal is subject to the statutes and rules of practice and procedure in civil cases.

Sec. 49.309. EXCLUSION OF NONIRRIGATED PROPERTY. For the purposes of this section and Sections 49.310-49.314, the following definitions shall apply:

(1) "Nonirrigated property" means land that:

(A) is not irrigable;

(B) the owners of a majority of the acreage of which no longer intend to irrigate; or

(C) has been subdivided into:

(i) town lots, or town lots and blocks, or small parcels of the same general nature as town lots; or

(ii) town blocks and lots designed, intended, or suitable for residential, commercial, or other nonagricultural purposes, as distinguished from farm acreage whether subdivided into a subdivision or not; and

(iii) including streets, alleys, parkways, parks, and railroad property and rights-of-way located in the subdivided land.

The property described in Subdivision (1) shall be considered nonirrigated property regardless of whether the land is within or near a

municipality and regardless of whether a plat or map of the subdivision has been duly filed for record and recorded in the office of the county clerk of the county in which the land or any part of the land is situated.

The term does not include land that within the year preceding the date of the hearing under Section 49.310 was used for farming or agricultural purposes.

(2) "District" means a water control and improvement, water improvement, or irrigation district the principal purpose of which is furnishing water for the irrigation of agricultural lands or that is principally engaged in furnishing water for the irrigation of agricultural lands.

Sec. 49.310. AUTHORITY TO EXCLUDE LAND. (a) A petition for exclusion may be filed by the owner or owners, or their authorized agent, of a majority in acreage of nonirrigated property included within the boundaries of a district.

(b) Upon receipt of a petition for exclusion, or upon its own motion, a district shall issue an order excluding the property if, after notice and hearing, the board finds that:

(1) the described property is nonirrigated property;

(2) the applicable requirements of Section 49.311 have been satisfied;

(3) the owner or owners do not object to the exclusion of their nonirrigated property; and

(4) it is in the best interest of the district and of the described property to exclude that property from the district.

(c) The district shall follow the notice and hearing provisions and other procedural requirements for excluding territory applicable to that district as set out in Sections 49.303-49.307.

Sec. 49.311. CONSENT FROM HOLDERS OF INDEBTEDNESS. If the district has outstanding bonded indebtedness, or indebtedness under a loan from a governmental agency, a written consent from an authorized representative of the holder or holders of the indebtedness consenting to the exclusion shall be obtained and filed with the district before the hearing.

Sec. 49.312. RESULTS OF EXCLUSION. (a) Upon issuance of an order excluding property, that property is no longer a part of the district and is not entitled to water service from the district.

(b) Any taxes, assessments, or other charges owed to the district at the time of exclusion remain the obligation of the owner of the excluded property and continue to be secured by statutory liens on the property, if any.

(c) Once excluded, the landowner has no further liability to the district for future taxes, assessments, or other charges of the district.

(d) A copy of the order excluding the property from the district certified and acknowledged by the secretary of the board shall be recorded by the district in the real property records of the county in which the excluded property is located as evidence of the exclusion.

Sec. 49.313. DISTRICT FACILITIES ON EXCLUDED PROPERTY. If any canals, ditches, pipelines, pumps, or other facilities of the district are located on lands excluded by the resolution of the board, the exclusion does not affect or interfere with any rights that the district has to maintain and continue operation of the facilities as located for the purpose of servicing lands remaining in the district.

Sec. 49.314. WATER ALLOCATIONS. (a) After the district adopts an order excluding nonirrigated property, a city or other water supply corporation that serves the excluded land with a potable water supply may petition the district to apply to the commission to convert the proportionate irrigation water allocation of the land excluded as nonirrigated property, as determined by the district, from irrigation use to municipal use allocation.

(b) The district shall make such application to the commission within 30 days of the filing of a petition by the city or water supply corporation that serves the land with a potable water supply, provided the city or other water supply corporation pays the district the amount the district estimates will be its reasonable expenses and attorney's fees incurred in the commission conversion proceedings and enters into an agreement with the district setting forth the basis on which the water allocation shall be delivered, or made available, to the city or water supply corporation covering such terms as the entities may agree to, and in the event the parties cannot agree, such dispute shall not be subject to the jurisdiction of the commission, or its successors, under this code but subject to resolution through alternative dispute resolution. In such commission proceeding, the city or water supply corporation shall provide evidence to the commission of the current or projected need within a five year period for the municipal-use water allocation after such conversion as a condition of such conversion of use of the district's water rights from irrigation use to municipal use.

[Sections 49.315-49.320 reserved for expansion]

SUBCHAPTER K. DISSOLUTION

Sec. 49.321. DISSOLUTION AUTHORITY. After notice and hearing, the commission may dissolve any district that is inactive for a period of five consecutive years and has no outstanding bonded indebtedness.

Sec. 49.322. NOTICE OF HEARING. (a) The commission shall give notice of the dissolution hearing that briefly describes the reasons for the proceeding.

(b) The notice shall be published once each week for two consecutive weeks before the day of hearing in a newspaper having general circulation in the county or counties in which the district is located. The first publication shall be 30 days before the day of the hearing.

(c) The commission shall give notice of the hearing by first class mail addressed to the directors of the district according to the last record on file with the executive director.

Sec. 49.323. INVESTIGATION. The executive director shall investigate the facts and circumstances of the district to be dissolved and the result of the investigation shall be included in a written report.

Sec. 49.324. ORDER OF DISSOLUTION. The commission may enter an order dissolving the district at the conclusion of the hearing if it finds that the district has performed none of the functions for which it was created for a period of five consecutive years before the day of the proceeding and that the district has no outstanding bonded indebtedness.

Sec. 49.325. CERTIFIED COPY OF ORDER. The commission shall file a certified copy of the order of dissolution of the district in the deed records of the county or counties in which the district is located. If the particular district was created by a special Act of the legislature, the commission shall file a certified copy of the order of dissolution with the secretary of state.

Sec. 49.326. APPEALS. (a) Appeals from a commission order dissolving a district shall be filed and heard in the district court of any of the counties in which the land is located.

(b) The trial on appeal shall be de novo and the substantial evidence rule shall not apply.

Sec. 49.327. ASSETS ESCHATE TO STATE. Upon the dissolution of a district by the commission, all assets of the district shall escheat to the State of Texas. The assets shall be administered by the state treasurer and shall be disposed of in the manner provided by Chapter 72, Property Code.

[Sections 49.328-49.350 reserved for expansion]

SUBCHAPTER L. FIRE DEPARTMENTS

Sec. 49.351. FIRE DEPARTMENTS. (a) A district providing potable water or sewer service to household users may establish, operate, and maintain a fire department to perform all fire-fighting activities within the district as provided in this subchapter and may issue, with voter approval, bonds for financing the establishment of the fire department including the construction and purchase of necessary buildings, facilities, and equipment and the provision of an adequate water supply.

(b) After approval of the district electors of a plan to operate or jointly operate a fire department, the district or districts shall provide an adequate system and water supply for fire-fighting purposes, may construct and purchase necessary buildings, facilities, and equipment, and may employ all necessary personnel including supervisory personnel to operate the fire department.

(c) Bonds issued for establishment of the fire department shall be authorized and issued, and a district shall be authorized to levy a tax to pay the principal of and interest on such bonds, as provided by law for authorization and issuance of other bonds of the district.

(d) Two or more districts may contract to operate a joint fire department for their districts and shall include in the contract a system for joint administration and operation of the fire department, the extent of services to be provided, a method for funding the department from funds of each district, and any other terms and conditions the parties consider necessary.

(e) A district may contract with any other person to perform fire-fighting services within the district.

(f) Before a district establishes a fire department, contracts to operate a joint fire department, or contracts with another person to perform fire-fighting services within the district, the district must comply with the provisions of Subsections (g), (h), and (i).

(g) A district or districts proposing to act jointly shall develop a detailed plan for the establishment, operation, and maintenance of the proposed department, including a detailed presentation of all financial requirements. If a district is entering into a contract under Subsection (e), the district shall develop a plan that describes in detail the facilities and equipment to be devoted to service to the district and all proposals for providing the service and that includes a presentation of the financial requirements under the contract. Before adoption of a plan and any contract by the district, the board shall hold a hearing at which any person residing in the district may present testimony for and against the proposed plan and any proposed contract. Notice of the hearing and the place at which the plan and any contract may be examined shall be posted in two public places within the district at least 10 days before the date of the hearing.

(h) After adoption of the plan and any contract by the board, the plan and financial presentation, together with any contract and a written report in a form prescribed by the executive director describing existing fire departments and fire-fighting services available within 25 miles of the boundaries of the district, shall be submitted to the executive director for consideration by the commission under rules adopted by the commission. Before approval or disapproval, the commission shall hold a hearing. Notice of the hearing before the commission shall be posted by the board in at least two public places in the district at least five days before the hearing. Before the commission approves the application, it must find that it is economically feasible for the district to implement the plan and meet the provisions of any contract and shall take into consideration in giving its approval the general financial condition of the district and the economic feasibility of the district carrying out the plan or meeting the obligations of the contract.

(i) After approval by the commission, the district shall submit to the electors of the district at the election to approve bonds for financing the plan, or if no bonds are to be approved, at an election called for approval of the plan, the proposition of whether or not the plan should be implemented or entered into by the district. The ballots at the election shall be printed, as applicable, to provide for voting for or against the proposition: "The implementation of the plan for (operation/joint operation) of a fire department"; or "The plan and contract to provide fire-fighting services for the district."

(j) No funds of the district may be used to establish a fire department, to enter into joint operation of a fire department, or to contract for fire-fighting services without the approval of a plan by the electors as provided in this section. However, the district may use available funds for preparation of a plan and any contract. The operation of a fire department or provision of fire-fighting services is an essential public necessity, and

a district may discontinue any and all services, including water and sewer service, to any person who fails to timely pay fire department service fees or any other assessment adopted by the district to support the fire department or the provision of fire-fighting services.

[Sections 49.352-49.450 reserved for expansion]

SUBCHAPTER M. NOTICES, REPORTS, AND BANKRUPTCY

Sec. 49.451. POSTING SIGNS IN THE DISTRICT. (a) A district subject to the notice requirements of Section 49.452 shall, within 30 days after the effective date of this section or the creation of the district, post signs indicating the existence of the district at two principal entrances to the district.

(b) The size and exact location of the information contained on the signs shall be determined by the executive director.

Sec. 49.452. NOTICE TO PURCHASERS. (a)(1) Any person who proposes to sell or convey real property located in a district created under this title or by a special Act of the legislature that is providing or proposing to provide, as the district's principal function, water, sanitary sewer, drainage, and flood control or protection facilities or services, or any of these facilities or services that have been financed or are proposed to be financed with bonds of the district payable in whole or part from taxes of the district, or by imposition of a standby fee, if any, to household or commercial users, other than agricultural, irrigation, or industrial users, and which district includes less than all the territory in at least one county and which, if located within the corporate area of a city, includes less than 75 percent of the incorporated area of the city or which is located outside the corporate area of a city in whole or in substantial part, must first give to the purchaser the written notice provided in this section.

(2) The provisions of this section shall not be applicable to:

- (A) transfers of title under any type of lien foreclosure;
- (B) transfers of title by deed in cancellation of indebtedness secured by a lien upon the property conveyed; or
- (C) transfers of title by reason of a will or probate proceedings.

(b) The prescribed notice for all districts shall be executed by the seller and shall read as follows:

"The real property, described below, that you are about to purchase is located in the _____ District. The district has taxing authority separate from any other taxing authority and may, subject to voter approval, issue an unlimited amount of bonds and levy an unlimited rate of tax in payment of such bonds. As of this date, the rate of taxes levied by the district on real property located in the district is \$ _____ on each \$100 of assessed valuation. If the district has not yet levied taxes, the most recent projected rate of debt service tax, as of this date, is \$ _____ on each \$100 of assessed valuation. The total amount of bonds approved by the voters and which have been or may, at this date, be issued is \$ _____, and the aggregate initial principal amounts of all bonds issued for one or more of the specified facilities of the district and payable in whole or in part from property taxes is \$ _____"

"The district has the authority to adopt and impose a standby fee on property in the district that has water, sanitary sewer, or drainage facilities and services available but not connected and which does not have a house, building, or other improvement located thereon and does not substantially utilize the utility capacity available to the property. The district may exercise the authority without holding an election on the matter. As of this date, the most recent amount of the standby fee is \$ _____. An unpaid standby fee is a personal obligation of the person that owned the property at the time of imposition and is secured by a lien on the property. Any person may request a certificate from the district stating the amount, if any, of unpaid standby fees on a tract of property in the district.

"The purpose of this district is to provide water, sewer, drainage, or flood control facilities and services within the district through the issuance of bonds payable in whole or in part from property taxes. The cost of these utility facilities is not included in the purchase price of your property, and these utility facilities are owned or to be owned by the district. The legal description of the property you are acquiring is as follows:

(Date)

Signature of Seller

PURCHASER IS ADVISED THAT THE INFORMATION SHOWN ON THIS FORM IS SUBJECT TO CHANGE BY THE DISTRICT AT ANY TIME. THE DISTRICT ROUTINELY ESTABLISHES TAX RATES DURING THE MONTHS OF SEPTEMBER THROUGH DECEMBER OF EACH YEAR, EFFECTIVE FOR THE YEAR IN WHICH THE TAX RATES ARE APPROVED BY THE DISTRICT. PURCHASER IS ADVISED TO CONTACT THE DISTRICT TO DETERMINE THE STATUS OF ANY CURRENT OR PROPOSED CHANGES TO THE INFORMATION SHOWN ON THIS FORM.

"The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or prior to execution of a binding contract for the purchase of the real property described in such notice or at closing of purchase of the real property.

(Date)

Signature of Purchaser

"(Note: Correct district name, tax rate, bond amounts, and legal description are to be placed in the appropriate space.) Except for notices included as an addendum or paragraph of a purchase contract, the notice shall be executed by the seller and purchaser, as indicated. If the district does not propose to provide one or more of the specified facilities and services, the appropriate purpose may be eliminated. If the district has not yet levied taxes, a statement of the district's most recent projected rate of debt service tax is to be placed in the appropriate space. If the district does not have approval from the commission to adopt and impose a standby fee, the second paragraph of the notice may be deleted. For the

purposes of the notice form required to be given to the prospective purchaser prior to execution of a binding contract of sale and purchase, a seller and any agent, representative, or person acting on the seller's behalf may modify the notice by substitution of the words 'January 1, _____' for the words 'this date' and place the correct calendar year in the appropriate space."

(c) The notice required by this section shall be given to the prospective purchaser prior to execution of a binding contract of sale and purchase either separately or as an addendum or paragraph of a purchase contract. In the event a contract of purchase and sale is entered into without the seller providing the notice required by this subsection, the purchaser shall be entitled to terminate the contract. If, however, the seller furnishes the required notice at or prior to closing the purchase and sale contract and the purchaser elects to close even though such notice was not timely furnished prior to execution of the contract, it shall be conclusively presumed that the purchaser has waived all rights to terminate the contract and recover damages or other remedies or rights under the provisions of this section. Notwithstanding any provision of this subchapter to the contrary, all sellers, title companies, and examining attorneys, and any agent, representative, or person acting on their behalf, shall not be liable for damages under the provisions of either Subsection (l) or (m) or liable for any other damages to any person for failure to provide the notice required by this section to a purchaser prior to execution of a binding contract of a purchase and sale when the district has not filed the information form and map or plat as required under Section 49.455.

(d) The purchaser shall sign the notice or purchase contract including such notice to evidence the receipt of notice.

(e) At the closing of purchase and sale, a separate copy of such notice with current information shall be executed by the seller and purchaser, acknowledged, and thereafter recorded in the deed records of the county in which the property is located. For the purposes of this section, all sellers, title companies, and examining attorneys, and any agent, representative, or person acting on their behalf, shall be entitled to rely on the accuracy of the information form and map or plat as last filed by each district under Section 49.455 or the information contained in or shown on the notice form issued by the district under Section 49.453 in completing the notice form to be executed by the seller and purchaser at the closing of purchase and sale. Any information taken from the information form or map or plat as last filed by each district and the information contained in or shown on the notice form issued by the district under Section 49.453 shall be, for purposes of this section, conclusively presumed as a matter of law to be correct. All subsequent sellers, purchasers, title insurance companies, examining attorneys, and lienholders shall be entitled to rely upon the information form and map or plat filed by the district or the notice form issued by the district under Section 49.453.

(f) For the purposes of this section, an executory contract of purchase and sale having a performance period of more than six months shall be considered a sale under Subsection (a).

(g) For the purposes of the notice form to be given to the prospective purchaser prior to execution of a binding contract of sale and purchase, a seller and any agent, representative, or person acting in the seller's behalf may modify the notice by substitution of the words "January 1, _____" for the words "this date" and place the correct calendar year in the appropriate space. All sellers, and all persons completing the prescribed notice in the sellers' behalf, shall be entitled to rely on the information contained in or shown on the information form and map or plat filed of record by the district under Section 49.455 in completing the prescribed form to be given to the prospective purchaser prior to execution of a binding contract of sale and purchase. Except as otherwise provided in Subsection (e), any information taken from the information form or map or plat filed of record by the district in effect as of January 1 of each year shall be, for purposes of the notice to be given to the prospective purchaser prior to execution of a binding contract of sale and purchase, conclusively presumed as a matter of law to be correct for the period January 1 through December 31 of such calendar year. A seller and any persons completing the prescribed notice in the seller's behalf may provide more recent information, if available, than the information contained in or shown on the information form and map or plat filed of record by the district under Section 49.455 in effect as of January 1 of each year in completing the prescribed form to be given to the purchaser prior to execution of a binding contract of sale and purchase. Nothing contained in the preceding sentence shall be construed to create an affirmative duty on the part of a seller or any persons completing the prescribed notice in the seller's behalf to provide more recent information than the information taken from the information form and map or plat filed of record by the district as of January 1 of each year in completing the prescribed notice to be given to the purchaser prior to execution of a binding contract of sale and purchase. All subsequent sellers, purchasers, title insurance companies, examining attorneys, and lienholders shall be entitled to rely upon the information form and map or plat filed by the district.

(h) If such notice is given at closing as provided in Subsection (e), a purchaser, or the purchaser's heirs, successors, or assigns, shall not be entitled to maintain any action for damages or maintain any action against a seller, title insurance company, or lienholder, or any agent, representative, or person acting in their behalf, by reason of use by the seller of the information filed for record by the district or reliance by the seller on the filed plat and filed legal description of the district in determining whether the property to be sold and purchased is within the district. No action may be maintained against any title company for failure to disclose the inclusion of the described real property within a district when the district has not filed for record the information form, map, or plat with the clerk of the county or counties in which the district is located.

(i) Any purchaser who purchases any real property in a district and who thereafter sells or conveys the same shall on closing of such subsequent sale be conclusively considered as having waived any prior right to damages under this section.

(j) It is the express intent of this section that all sellers, title insurance companies, examining attorneys, vendors of property and tax information, real estate brokers, and lienholders, and any agent, representative, or person acting on their behalf, shall be entitled to rely on the accuracy of the information form and map or plat as last filed by each district or the information contained in or shown on the notice form issued by the district under Section 49.453, or for the purposes of the notice to be given the purchaser prior to execution of a binding contract of sale and purchase the information contained in or shown on the information form and map or plat filed of record by the district in effect as of January 1 of each year for the period January 1 through December 31 of such calendar year.

(k) Except as otherwise provided in Subsection (c), if any sale or conveyance of real property within a district is not made in compliance with the provisions of this section, the purchaser may institute a suit for damages under the provisions of either Subsection (l) or (m).

(l) A purchaser of real property covered by the provisions of this section, if the sale or conveyance of the property is not made in compliance with this section, may institute a suit for damages in the amount of all costs relative to the purchase of the property plus interest and reasonable attorney's fees. The suit for damages may be instituted jointly or severally against the person, firm, corporation, partnership, organization, business trust, estate, trust, association, or other legal entity that sold or conveyed the property to the purchaser. Following the recovery of damages under this subsection, the amount of the damages shall first be paid to satisfy all unpaid obligations on each outstanding lien or liens on the property and the remainder of the damage amount shall be paid to the purchaser. On payment of all damages respectively to the lienholders and purchaser, the purchaser shall reconvey the property to the seller.

(m) A purchaser of real property covered by the provisions of this section, if the sale or conveyance of the property is not made in compliance with this section, may institute a suit for damages in an amount not to exceed \$5,000, plus reasonable attorney's fees.

(n) A purchaser is not entitled to recover damages under both Subsections (l) and (m), and entry of a final decision awarding damages to the purchaser under either Subsection (l) or (m) shall preclude the purchaser from recovering damages under the other subsection. Notwithstanding any part or provision of the general or special laws or the common law of the state to the contrary, the relief provided under Subsections (l) and (m) shall be the exclusive remedies for a purchaser aggrieved by the seller's failure to comply with the provisions of this section. Any action for damages shall not, however, apply to, affect, alter, or impair the validity of any existing vendor's lien, mechanic's lien, or deed of trust lien on the property.

(o) A suit for damages under the provisions of this section must be brought within 90 days after the purchaser receives the first district tax notice or within four years after the property is sold or conveyed to the purchaser, whichever time occurs first, or the purchaser loses the right to seek damages under this section.

(p) Notwithstanding any provisions of this subchapter to the contrary, a purchaser may not recover damages of any kind under this section if that person:

(1) purchases an equity in real property and in conjunction with the purchase assumes any liens, whether purchase money or otherwise; and

(2) does not require proof of title by abstract, title policy, or any other proof of title.

Sec. 49.453. NOTICE FORM FROM DISTRICT. (a) A district covered by Section 49.452 shall also maintain in the district office the particular form of Notice to Purchasers required by Section 49.452 to be furnished by a seller to a purchaser of real property in that district and shall, upon written request of any person, issue the notice form completed by a district with all information required to be furnished by the district. A notice form issued by a district under the provisions of this section shall include a written statement that the notice form is being issued by the district, the date of its issuance, and the district's telephone number. A district shall not be required to orally provide the information.

(b) A district may charge a reasonable fee as determined by the district not to exceed \$10 for the issuance of a notice form pursuant to Subsection (a). The notice form shall be delivered by regular mail or made available at the district's office. If a district is requested to deliver the notice form to a person by an alternative method, the district may impose a charge not to exceed the actual cost of such delivery.

(c) A district may delegate the responsibility for issuance of the particular form of Notice to Purchasers to an employee or agent of the district. A district shall file with the commission the name, address, and telephone number of the employee or agent of the district responsible for issuance of the notice forms and shall notify the commission in writing within seven days after there is a change to the information required to be filed with the commission under the provisions of this subsection.

(d) Any notice issued by the district shall contain the information effective as of the date of its issuance.

Sec. 49.454. NOTICE OF UNPAID STANDBY FEES. (a) A district covered by Section 49.452 shall, on the written request of any person, issue a certificate stating the amount of any unpaid standby fees, including interest on the fees, that have been assessed against a tract of property in the district. The district may charge a fee not to exceed \$10 for each certificate. A certificate issued through fraud or collusion is void.

(b) If the district issues a certificate containing an erroneous statement under Subsection (a) and the owner of the property transfers the property to a good faith purchaser for value, the lien on the property provided by Section 49.231(k) is extinguished to the extent of the error.

(c) This section does not affect the liability for any unpaid standby fees of the former owner of the undeveloped property under Section 49.231(k).

Sec. 49.455. FILING INFORMATION. (a) The board covered by the provisions of Section 49.452 of this subchapter shall file with the county clerk in each of the counties in which all or part of the district is located

a duly affirmed and acknowledged information form that includes the information required in Subsection (b), and a complete and accurate map or plat showing the boundaries of the district.

(b) The information form filed by a district under this section shall include:

(1) the name of the district;

(2) the complete and accurate legal description of the boundaries of the district;

(3) the most recent rate of district taxes on property located in the district;

(4) the total amount of bonds that have been approved by the voters and which may be issued by the district (excluding refunding bonds and any bonds or portion of bonds payable solely from revenues received or expected to be received pursuant to a contract with a governmental entity);

(5) the aggregate initial principal amount of all bonds of the district payable in whole or part from taxes (excluding refunding bonds and any bonds or portion of bonds payable solely from revenues received or expected to be received pursuant to a contract with a governmental entity) that have been previously issued and remain outstanding;

(6) whether a standby fee is imposed by the district and, if so, the amount of the standby fee;

(7) the date on which the election to confirm the creation of the district was held if such was required;

(8) a statement of the functions performed or to be performed by the district; and

(9) the particular form of Notice to Purchasers required by Section 49.452 of this subchapter to be furnished by a seller to a purchaser of real property in that district completed by the district with all information required to be furnished by the district.

If a district has not yet levied taxes, a statement to such effect together with the district's most recent projected rate of debt service tax shall be substituted for Subdivisions (3) and (4).

(c) The information form and map or plat required by this section shall be signed by a majority of the members of the board and by each such officer affirmed and acknowledged before it is filed with the county clerk, and each amendment made to an information form or map shall also be signed by the members of the board and by each such officer affirmed and acknowledged before it is filed with the county clerk.

(d) The information form required by this section shall be filed with the county clerk within 48 hours after the effective date of this section or within 48 hours after the district is officially created, whichever time comes first. For purposes of this section, the words "officially created" mean the date and hour in which the results of the election to confirm the creation of the district are declared.

(e) Within seven days after there is a change in any of the information contained in the district information form, map, or plat, the district shall

file an amendment to the information form, map, or plat setting forth the changes made.

(f) Any person who affirms the corrections and accuracy of and acknowledges an information form, map, or plat, or any amendment to an information form, map, or plat that includes information that is inaccurate or incorrect shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$1,000 for each violation.

(g) If a district fails to file the information required by this section in the time required, the executive director may request the state attorney general or the district or county attorney of the county in which the district is located to seek a writ of mandamus to force the board to prepare and file the necessary information.

(h) Any member of a governing board who wilfully fails or refuses to join in filing an information form, map, or plat or an amendment to an information form, map, or plat under this section shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$1,000 for each violation. A member of a governing board is presumed to have wilfully failed or refused to join in the filing of an information form, map, or plat or an amendment to an information form, map, or plat if that member was present at the meeting at which the information included in the information form, map, or plat or amendment to the information form, map, or plat was adopted.

(i) If a district covered by this section is dissolved, annexed to another local government, or consolidated with another district, the members of the board shall file a statement of this fact together with the effective date of the dissolution, annexation, or consolidation with the information form. After a district is dissolved and the statement is filed under this subsection, a person who sells or conveys property within the dissolved district is no longer required to give notice under Section 49.452 of this subchapter.

(j) A copy of all information forms, maps, or plats and amendments to these filed under this section shall also be filed with the executive director.

Sec. 49.456. BANKRUPTCY OF DISTRICTS: AUTHORITY OF COMMISSION. (a) Notwithstanding Section 140.001, Local Government Code, or any other law of this state, a district created under Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, that is subject to the continuing supervision of the commission may not proceed under Chapter 9 of the Federal Bankruptcy Code (11 U.S.C. Sections 901-946) or any other law enacted by the Congress of the United States under federal bankruptcy authority until the commission authorizes the district to proceed under those laws by written order.

(b) A district requesting the commission's authorization to proceed under Chapter 9 of the Federal Bankruptcy Code (11 U.S.C. Sections 901-946) or any other federal bankruptcy law shall file an application with the commission requesting authorization.

(c) The commission shall investigate the financial condition of a district submitting an application under Subsection (b), including its assets,

liabilities, and sources of revenues and may require a district to submit any information that the commission considers material to a determination of whether authorization to proceed in bankruptcy should be granted.

(d) The commission may not authorize a district to proceed in bankruptcy unless the commission determines that the district cannot, through the full exercise of its rights and powers under the laws of this state, reasonably expect to meet its debts and other obligations as they mature.

(e) The commission shall adopt and assess reasonable and necessary fees adequate to recover the costs of the commission in administering this section.

SECTION 3. Title 4, Water Code, is amended by adding Chapter 59 to read as follows:

CHAPTER 59. REGIONAL DISTRICTS

SUBCHAPTER A. DISTRICT CREATION

Sec. 59.001. PURPOSE AND APPLICATION. (a) The purpose of this chapter is to authorize creation and operation of regional districts for water, sanitary sewer, drainage, and municipal solid waste disposal under Section 59, Article XVI, Texas Constitution.

(b) This chapter applies only in counties with a population of at least 2.2 million, according to the most recent federal census, or bordering a county with a population of at least 2.2 million, according to the most recent federal census.

Sec. 59.002. DEFINITIONS. (a) In this chapter:

(1) "District" means a district created or operating under this chapter.

(2) "Municipal district" means a district created under general law or a special Act operating under Chapter 51, 53, or 54.

(3) "Bond" means bonds, coupons, notes, or any other evidence of indebtedness.

(b) Other terms not defined by this chapter have the same meaning assigned to those terms by Section 49.001.

Sec. 59.003. CREATION OF DISTRICT. (a) A district may be created by:

(1) The boards of at least 20 percent of the total number of municipal districts to be included in the proposed district may jointly petition the commission for creation of a district. The petition must describe the territory to be included in the district and must include resolutions endorsing creation of the district adopted by each municipal district to be included in the district.

(2) The owner or owners of 2,000 or more contiguous acres may petition the commission for creation of a district.

(3) The commissioners courts of one or more counties may petition the commission for creation of a district in any territory within the county.

(4) The governing body of any city may petition the commission for creation of a district in any territory within the city or its extraterritorial jurisdiction.

(b) Petitions for the creation of a district must:

(1) describe the boundaries of the proposed district by metes and bounds that adequately and completely circumscribe the property so that there is complete closure of the property or by lot and block numbers if there is a recorded map or plat or subdivision survey of the area;

(2) state the general nature of the work proposed to be done, the necessity of the work, and the cost of any projects of the district as estimated by those filing the petition;

(3) state the name of each petitioner; and

(4) include a name of the district generally descriptive of the locale of the district followed by the words "Regional District."

(c) A proposed district may not have the same name as any other district in the state.

(d) Section 54.013 applies to the composition of districts created under this chapter.

Sec. 59.004. PURPOSES OF DISTRICT. A district shall be created:

(1) to purchase, own, hold, lease, and otherwise acquire sources of water supply;

(2) to build, operate, and maintain facilities for the transportation of water;

(3) to sell water to cities, to political subdivisions of this state, to water supply corporations, to private business entities, and to individuals;

(4) to purchase, own, hold, lease, and otherwise acquire equipment and mechanisms necessary for sanitary sewer and wastewater treatment;

(5) to build, operate, and maintain facilities for sanitary sewer and wastewater treatment;

(6) to transport and treat sanitary sewer and wastewater effluent of cities and political subdivisions of this state and for private business entities or individuals;

(7) to purchase, own, hold, lease, and otherwise acquire equipment and mechanisms for the drainage of storm water and floodwater; and

(8) for the purposes outlined in Section 54.012.

Sec. 59.005. MATCHING FUNDS GUARANTEES. If the Texas Water Development Board requires that matching funds be provided as a condition for receiving a loan or grant from the Texas Water Development Board from research and planning funds, the matching funds may not be provided through a guarantee of matching funds by any individual who has a financial interest in the regional district or who will receive any direct financial benefit from a regional district project.

Sec. 59.006. CONSENT OF CITY. (a) Land in the corporate limits of a city or in the extraterritorial jurisdiction of a city may not be included in a district unless the city grants its written consent by resolution or ordinance to the inclusion of the land in the district.

(b) If the governing body of a city fails or refuses to grant permission for the inclusion of land in its extraterritorial jurisdiction in a district within 120 days after receipt of a written request, the person or entity desiring to create the district may petition the governing body of the city to make available the water, sewer, or drainage service contemplated to be provided by the district.

(c) Failure of the governing body of the city and the requesting district to execute a mutually agreeable contract providing for the service requested within six months after receipt of a request for consent constitutes authorization for the inclusion of land in the district under this section. Authorization for the inclusion of the land in the district under this section means only authorization to initiate proceedings to include the land in the district as otherwise provided by this chapter.

(d) Sections 54.016(e), (f), (g), and (h) apply under this chapter.

Sec. 59.007. GRANTING OR REFUSING PETITION; EXCLUSION OF TERRITORY. (a) If after the hearing of the petition the commission finds that the petition conforms to the requirements of this chapter and that the creation of the district would be of benefit to the territory to be included in the district, the commission shall issue an order granting the petition for creation. If the commission finds that part of the territory included in the proposed district will not benefit from the creation of the district, the commission shall exclude that territory from the proposed district and redefine the proposed district's boundaries accordingly.

(b) If the commission finds that the petition does not conform to the requirements of this chapter or that the proposed projects are not of benefit to the territory in the proposed district, the commission shall issue an order either denying the petition or requiring petitioners to amend their petition.

(c) A copy of the order of the commission granting or denying a petition shall be mailed to each city having extraterritorial jurisdiction in the county or counties in which the district is to be located that has requested notice of hearings as provided by Section 54.019.

[Sections 59.008-59.020 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 59.021. DIRECTORS. (a) The commission shall appoint temporary directors who shall serve until permanent directors are elected.

(b) A petition requesting creation filed in accordance with Section 59.006 may provide that directors be elected by precinct as provided by Subsection (h).

(c) The board of directors is composed of five members unless the petition requesting creation of the district requests and the commission approves a board that consists of seven members.

(d) Permanent directors shall be elected in accordance with Chapter 49.

(e) If the petition for creation has requested the election of seven directors as provided by Subsection (c), unless otherwise agreed, the three directors elected who received the fewest number of votes, whether their election is by precinct or at large, shall serve until the next directors election following the confirmation election and the four who received the highest number of votes shall serve until the second directors election after the confirmation election.

(f) After the creation of the district, the persons or entities that petitioned for creation or 50 qualified voters of the district may file a petition with the commission requesting to expand the district's board to seven members. If the commission grants the petition, the commission

shall appoint two temporary directors. One temporary director shall serve until the next directors election and one shall serve until the next succeeding directors election. At each election one director shall be elected to serve for a four-year term.

(g) If the board of directors of the district is expanded to seven members, four directors shall constitute a quorum and a concurrence of four directors is necessary in all matters pertaining to the business of the district.

(h) A petition for the creation of a district may request that the board be elected to represent a geographic area. If the petition requesting creation of the district is granted, the commission shall establish precincts from which the directors are to be elected. In establishing the precincts the commission shall attempt to have directors represent geographic areas with equal numbers of people and shall comply with the federal Voting Rights Act of 1965 (42 U.S.C. Sections 1971, 1973 et seq.). Thereafter, the board of directors of the district shall revise the precincts from time to time to cause them to comply with the provisions of this subsection.

Sec. 59.022. ABILITY TO SET RATES. The district may charge rates to persons and entities located outside the district's boundaries on terms, rates, and charges the board of directors may determine to be advisable. In setting rates for out-of-district customers, the board shall set rates sufficient to enable it to meet operation and maintenance expenses and to pay the principal of and interest on debt issued in connection with providing service and to provide a reasonable reserve for replacements to the district. In setting rates, the district may take into consideration past operation and debt service expenses.

Sec. 59.023. ISSUANCE OF BONDS. The district may issue bonds for the purpose of purchasing, constructing, acquiring, owning, operating, repairing, improving, or extending any district works, improvements, facilities, plants, equipment, and appliances needed to accomplish the purposes of the district, including works, improvements, facilities, plants, equipment, and appliances needed to provide a waterworks system, sanitary sewer system, storm sewer system, solid waste disposal system, and parks and recreational facilities. Prior to issuing bonds or other obligations, a confirmation election must be held in accordance with Chapter 49, and a majority of voters must approve the establishment of the district.

Sec. 59.024. EXCLUSION OF CERTAIN MUNICIPAL DISTRICTS. (a) A municipal district may be excluded from the district as provided by this section.

(b) To be excluded, the board of directors of the municipal district may adopt a resolution requesting exclusion by a majority vote of its board of directors and shall file the petition with the directors of the proposed district before the first confirmation election.

(c) At the time of the district's confirmation election, a separate voting precinct shall be used for the qualified voters in each municipal district that has filed a petition requesting exclusion. The votes in each precinct shall be tallied separately to determine whether that municipal district will be excluded from the district boundaries.

(d) If a majority of the votes cast in a municipal district requesting exclusion vote against confirmation of the district, the votes cast in the confirmation election shall not be counted for the confirmation election, bond election, or maintenance tax election, and that municipal district must be excluded from the boundaries of the district by the board of directors of the district at the time the results of the election are canvassed.

(e) After a confirmation election at which the district is authorized to be created, the board of directors of the district shall adopt an order redefining the boundaries of the district to exclude those municipal districts petitioning for exclusion that have voted not to confirm creation of the district.

(f) Before the creation hearing, any municipal district located within the proposed district may petition the commission for a separate voting precinct to be used within the boundaries of the petitioning district at the time of the district's confirmation election. If the commission grants the petition requesting a separate voting precinct, Subsections (c) through (e) apply.

Sec. 59.025. CONFIRMATION ELECTION. (a) Before a district may be created pursuant to a petition granted by the commission, a confirmation election must be held within the boundaries of the proposed district.

(b) The directors appointed by the commission shall call and hold the confirmation election in the manner provided for conducting elections under Chapter 49. The provisions of those sections relating to a directors election do not apply to an election held under this section.

(c) If the creation of the district is defeated, subsequent confirmation elections may not be held to confirm the creation of the district.

(d) A bond election, maintenance tax election, and any other election may be held at the same time and in conjunction with a confirmation election.

[Sections 59.026-59.050 reserved for expansion]

SUBCHAPTER C. ADDING OR EXCLUDING TERRITORY; DISSOLUTION

Sec. 59.051. ADDING LAND BY PETITION OF LESS THAN ALL LANDOWNERS. In addition to the method of adding land to a district described in Section 59.052, defined areas of land, regardless of whether they are contiguous to the district, may be annexed to the district in the manner provided in Chapter 49.

Sec. 59.052. FILING OF PETITION. A petition requesting the annexation of a defined area that is signed by a majority in value of the owners of land in the defined area, as shown by the tax rolls of the county or counties in which that area is located, that is signed by 50 landowners if the number of landowners is more than 50, that is signed by the single landowner of 2,000 or more acres of land in the area, or that is signed by a majority of the governing body of a municipal district, a county, or a city requesting annexation shall be filed with the secretary of the board.

Sec. 59.053. DISSOLUTION OF DISTRICT BEFORE ISSUANCE OF BONDS. (a) If the board considers it advisable before the issuance of

any bonds, the board may dissolve the district and liquidate the affairs of the district as provided by Sections 54.734 through 54.738.

(b) If a majority of the board finds at any time before the authorization of bonds that the proposed district and its proposed activities are for any reason impracticable or apparently cannot be successfully and beneficially accomplished, the board may issue notice of a hearing on a proposal to dissolve the district.

Sec. 59.054. JUDICIAL REVIEW OF BOARD'S ORDER. The board's order to dissolve the district may be judicially reviewed as provided in Chapter 49.

[Sections 59.055-59.070 reserved for expansion]

SUBCHAPTER D. MISCELLANEOUS

Sec. 59.071. ANNEXATION OR INCORPORATION BY CITY. (a) If a city annexes all or any part of the territory within a district, or incorporates all or any part of any territory within a district, the city shall succeed to the powers, duties, assets, and obligations of the district as provided by this chapter.

(b) On annexation of any part of the territory of a district by a city or incorporation by a city of any part of the territory of a district, the city shall assume a pro rata share of all debt of the district payable in whole or in part by ad valorem taxes incurred for water, sewer, or drainage purposes or any combination of the three purposes. The percentage of the assumption shall be determined by multiplying the total debt of the district payable in whole or in part from taxes incurred for the stated purposes by a fraction, the numerator of which is the assessed value of the property to be annexed or incorporated based on the most recent certified county property tax rolls at the time of annexation or incorporation and the denominator of which is the total assessed value of the property of the district based on the most recent certified county property tax rolls at the time of annexation or incorporation.

(c) After annexation by a city of a portion of the territory of a district or incorporation over any part of the territory of a district, the district may not levy taxes on that territory, and the territory is no longer considered a part of the district for any purpose.

(d) If any district's debt payable in whole or in part from ad valorem taxes is assumed by a city, the governing body of the city shall levy and cause to be collected taxes on all taxable property within the city or provide other funds sufficient to pay the city's pro rata share of the principal of and interest on that debt as it becomes due and payable.

(e) If a city annexes or incorporates the entire territory of the district, the district shall be dissolved in accordance with Sections 43.074, 43.075, and 43.081, Local Government Code, if the district is located in one city or Sections 43.076-43.079, Local Government Code, if the district is located in more than one city.

(f) Section 43.071, Local Government Code, does not apply to the annexation of a district created pursuant to this chapter.

Sec. 59.072. OTHER LAWS. (a) This chapter prevails over any other law in conflict with or inconsistent with this chapter.

(b) Except as specifically provided by this chapter, Chapter 49 and Sections 54.018, 54.019(a), (b), (c), and (d), 54.020, 54.021, 54.023, 54.024, 54.201, 54.205, 54.207-54.208, 54.502-54.505, 54.507(b) and (c), 54.510-54.512, 54.514, 54.515, 54.518, 54.520, 54.521, 54.601-54.604, and 54.735-54.737 apply under this chapter.

(c) Section 54.019(e) does not apply to a district governed by this chapter.

SECTION 4. Section 51.0711(a), Water Code, is amended to read as follows:

(a) The governing body of a municipality that enters a contract or agreement with a district located in more than one county to jointly construct, acquire, operate, or maintain a regional wastewater system is entitled to appoint a special director to the board of the district. Section 51.072 ~~[of this code]~~ does not apply to a special director.

SECTION 5. Section 51.072, Water Code, is amended to read as follows:

Sec. 51.072. QUALIFICATIONS FOR DIRECTOR. To be qualified for election as a director, a person must be a resident of the state, own land subject to taxation in the district, and be at least 18 ~~[21]~~ years of age. Section 49.052 does not apply to a district governed by this chapter whose principal purpose is providing water for irrigation.

SECTION 6. Section 51.076(a), Water Code, is amended to read as follows:

(a) In a district created after June 18, 1967, with boundaries coterminous with the boundaries of a county, the commissioners court may provide in the order granting the petition for creation that the directors are to be selected either as provided in Section 49.102 ~~[51.073 of this code]~~ or by the "commissioners precinct method," which provides for the election of two directors from each commissioners precinct in the county and the election of one director from the county at large.

SECTION 7. Section 51.750(d), Water Code, is amended to read as follows:

(d) The temporary directors of each of the resulting districts must qualify as directors of the district pursuant to Section ~~[Sections]~~ 51.072 ~~[and 51.073 of this code]~~ within the period of 90 days after the election approving the division of the original district and shall assume their offices at the expiration of the 90-day period.

SECTION 8. Section 52.005, Water Code, is amended by adding Subsection (c) to read as follows:

(c) Sections 49.052, 49.216, and 49.301-49.308 do not apply to districts governed by this chapter.

SECTION 9. Section 52.115, Water Code, is amended to read as follows:

Sec. 52.115. MEETINGS. ~~[(a)]~~ The board shall hold regular quarterly meetings. It may hold meetings at other times as required for the business of the district.

~~[(b) Any person may attend a meeting of the board and may present in an orderly manner matters for the board's consideration.]~~

~~[(c) Meetings shall be conducted and notice of meetings shall be posted in accordance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).]~~

SECTION 10. Sections 52.294(c), (d), and (e), Water Code, are amended to read as follows:

~~(c) [Notice of an election must be given as provided by Section 52.059(c) of this code for creation elections.]~~

~~[(d)]~~ At an election to authorize bonds or notes payable wholly from ad valorem taxes, the ballots must be printed to provide for voting for or against the proposition: "The issuance of (bonds or notes) and the levy of taxes for payment of the (bonds or notes)." At any election to authorize bonds or notes payable from both ad valorem taxes and revenues, the ballots must be printed to provide for voting for or against: "The issuance of (bonds or notes) and the pledge of net revenues and the levy of ad valorem taxes adequate to provide for the payment of the (bonds or notes)."

~~(d) [(e)]~~ The board shall canvass the returns and declare the results of the election. If a majority of the votes cast at the election favor the issuance of the bonds or notes, the bonds or notes may be issued by the board, but if a majority of the votes cast at the election do not favor issuance of the bonds or notes, the bonds or notes may not be issued.

SECTION 11. Section 53.040, Water Code, is amended to read as follows:

Sec. 53.040. ELECTED SUPERVISORS TAKE OFFICE. If the election results in a division of the district, the five candidates receiving the most votes in each new district shall be declared elected. They shall immediately qualify in accordance with Section 49.055 ~~[by taking the constitutional oath of office and shall file the oath with the county clerk].~~

SECTION 12. Section 53.042, Water Code, is amended to read as follows:

Sec. 53.042. NEWLY ELECTED SUPERVISORS—TERM OF OFFICE. The newly elected supervisors hold office until the new district's next supervisors election ~~[first general election and then until their successors are elected and have qualified].~~

SECTION 13. Section 53.062, Water Code, is amended to read as follows:

Sec. 53.062. BOARD OF SUPERVISORS. A district created under this chapter is governed by a board of five elected supervisors. ~~[Specific provisions for the election of supervisors are found in Section 53.021, Section 53.086, and Section 53.0861 of this code.]~~

SECTION 14. Section 53.088, Water Code, is amended to read as follows:

Sec. 53.088. STATUS OF THE DISTRICT. ~~[(a)]~~ A district is:

- (1) a governmental agency;
- (2) a body politic and corporate; and
- (3) a defined district within the meaning of Article XVI, Section 59, of the Texas Constitution.

~~[(b) A district may, through its board, sue and be sued in any court of this state in the name of the district. All courts of this state shall take judicial notice of the creation of a district. A district shall contract and be contracted with in the name of the district.]~~

SECTION 15. Section 53.172, Water Code, is amended to read as follows:

Sec. 53.172. ORDERING BOND ELECTION. After the creation of a district and the qualification of the supervisors, the board may order an election in the district to authorize a bond issue. ~~[The board shall set the day for the election, which must be held during the period beginning on the 20th day and ending with the 30th day after the day of the order.]~~ At this election, the board shall submit only a proposition authorizing the issuance of bonds and the levy of a tax to pay the bonds. The ballots shall be printed to allow for voting for or against the proposition: "The issuance of bonds and the levy of taxes to pay the bonds."

SECTION 16. Section 54.025, Water Code, is amended to read as follows:

Sec. 54.025. QUALIFICATION OF TEMPORARY DIRECTORS. After a district has been organized, each temporary director shall execute a ~~[his]~~ bond in accordance with the provisions of Section ~~49.055~~ ~~[54.116 of this code]~~ and shall take the ~~[his]~~ oath of office, and the board shall meet and organize.

SECTION 17. Section 54.036, Water Code, is amended to read as follows:

Sec. 54.036. DIRECTORS TO CONTINUE SERVING. The existing board of a district converted to a municipal utility district under the provisions of this chapter shall continue to serve as the board of the converted district ~~[until the first Saturday in April following conversion of the district, at which time five directors shall be elected to serve for such period of time and in the same manner as provided in Section 54.029 of this code for directors first elected for a district].~~

SECTION 18. Section 54.203, Water Code, is amended to read as follows:

Sec. 54.203. MUNICIPAL SOLID WASTE. A district is authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, extend, or establish a municipal solid waste collection and disposal system, including recycling, inside and outside the district and make proper charges for it. A district may require use of such services as a condition for receiving other district services. A district may enter into an exclusive contract with a private entity to provide such services to all land and persons within its boundaries.

SECTION 19. Section 54.729(a), Water Code, is amended to read as follows:

(a) After the board of each district has agreed on the terms and conditions of consolidation, which may include the assumption by each district of the ~~[other district's]~~ bonds, notes, or other obligations and voted but unissued bonds of the other consolidating districts payable in whole or in part from taxation, the levy of taxes to pay for the bonds, and

adoption of a name for the consolidated district, the board shall order an election in each district to determine whether the districts should be consolidated.

SECTION 20. Section 54.730(a), Water Code, is amended to read as follows:

(a) After two or more districts are consolidated, they become one district and are governed as one district, except for the payment of debts created before consolidation if the conditions of consolidation do not provide for the assumption by each district of the ~~[other's]~~ bonds, notes, or other obligations and voted but unissued bonds of the other consolidating districts.

SECTION 21. Section 54.732, Water Code, is amended to read as follows:

Sec. 54.732. ASSESSMENT AND COLLECTION OF TAXES. After consolidation, the district shall assess and collect taxes on property in the original districts to pay debts created by the original districts unless each district has assumed the ~~[other district's]~~ bonds, notes, or other indebtedness payable in whole or in part from taxation of the other consolidating districts.

SECTION 22. Section 54.733, Water Code, is amended to read as follows:

Sec. 54.733. VOTED BUT UNISSUED BONDS. In the event any consolidating [either] district has voted but unissued bonds payable in whole or in part from taxation and the consolidated district assumed the voted but unissued bonds and the consolidated district was authorized to levy taxes to pay for the bonds, then the consolidated district shall be authorized to issue the voted but unissued bonds in the name of the consolidated district and levy a uniform tax on all taxable property in the consolidated district to pay for the bonds.

SECTION 23. Chapter 54, Water Code, is amended by adding Sections 54.739-54.747 to read as follows:

Sec. 54.739. SUBSTITUTING LAND OF EQUAL ACREAGE AND VALUE. After the district is organized and acquires facilities with which to function for the purposes for which it was organized, and votes, issues and sells bonds for such purposes, land within the district boundaries subject to taxation that does not need or utilize the services of the district may be excluded and other land not within the boundaries of the district may be included within the boundaries of the district as provided by the provisions of this section and Sections 54.741-54.748 subject to commission approval.

Sec. 54.740. REQUISITES FOR APPLICATION FOR EXCLUSION. An owner of land in the district not receiving services from the district may apply for its exclusion from the district boundaries if all taxes levied and assessed by the district on the land to be excluded have been fully paid. The application shall set forth facts concerning the land proposed for exclusion, including evidence of the reasonable market value of the land, and state that the other requisites for the exclusion of the land and substitution of other land have been fulfilled or will be fulfilled at the

hearing upon the application. The application shall be verified and acknowledged in a recordable form as conveyances of real property.

Sec. 54.741. INCLUSION OF SUBSTITUTE LAND REQUIRED. An application for exclusion can only be considered by the board if an application is filed by an owner of other land lying outside the boundaries of the district seeking inclusion of land that can be served in a practical manner by the district of at least equal value to the land proposed for exclusion. Such land must be included within the district boundaries and taxing jurisdiction of the district simultaneously with the exclusion of the land proposed for exclusion. Such included land must be of sufficient acreage to avoid an impairment of the security for payment of voted and issued bonds and any other contract obligations payable or secured, in whole or in part, from ad valorem taxes or revenues of the district.

Sec. 54.742. APPLICATION FOR INCLUSION. The application submitted by an owner of land proposed for inclusion shall set forth that the owner of the new land assumes the payment of all taxes, assessments and fees levied on the land and assessed by the district after the date the land is included in the district. The application shall also set forth an agreement by the owner of the land proposed for inclusion that the land will be subject to future taxes for bond tax and other assessments and fees levied and assessed by the district and be subject to the same liens and provisions and statutes governing all other lands in the district as though the land had been incorporated originally in the district. The application for inclusion shall be verified and acknowledged in a recordable form as conveyances of real property.

Sec. 54.743. NOTICE OF HEARING AND HEARING PROCEDURES. The board shall give notice of the hearing on the applications for exclusion and inclusion in conformity with the notice and hearing requirements otherwise applicable to exclusions or additions of land. The board at such hearing shall hear all interested parties and all evidence in connection with the applications.

Sec. 54.744. IMPAIRMENT OF SECURITY. For purposes of the board's consideration of the applications, the lands proposed for inclusion shall be deemed to be sufficient to avoid an impairment of the security for payment of obligations of the district if:

- (1) according to the county tax rolls, the taxable value of such included lands equals or exceeds the taxable value of the excluded lands;
- (2) the estimated costs of providing district facilities and services to such included lands is equal to or less than the estimated costs of providing district facilities and services to the excluded lands; and
- (3) the district's outstanding bonds or contract obligations are payable in whole or in part by a pledge of net revenues from the ownership or operation of the district's facilities, and the projected net revenues to be derived from the lands to be included during the succeeding 12-month period, as determined by the district's engineer, equals or exceeds the projected net revenues that would otherwise have been derived from the lands to be excluded during the same period.

Sec. 54.745. BOARD'S RESOLUTION TO SUBSTITUTE. If the board finds that all the conditions provided for the exclusion of land and inclusion of other land in the district exist and that it is in the best interest of the district to grant such applications, it may adopt and enter in its minutes a resolution and order excluding all or part of the land proposed for exclusion and including all or part of the land proposed for inclusion. Prior to the effective date of the exclusion and inclusion of lands, the district shall have received payment of all fees, charges, assessments, taxes, together with any associated penalties and interest due or overdue in respect to the lands excluded, and if no ad valorem taxes or fees have yet been established by the district for the current year, an amount determined by the district to equal the estimated ad valorem taxes and standby fees to be established by the district for the current year, prorated to the date of exclusion with respect to such excluded lands, shall also be paid.

Sec. 54.746. LIABILITY OF EXCLUDED AND INCLUDED LAND. The land excluded from the district is free from any lien or liability created on the excluded land by reason of its having been included in the district. Land included in the district is subject to all laws, liens, and provisions governing the district and the land in the district.

Sec. 54.747. SERVICE TO INCLUDED LAND. The district has the same right and obligation to furnish services to the included land that it previously had to furnish to the excluded land.

SECTION 24. Section 55.101, Water Code, is amended to read as follows:

Sec. 55.101. BOARD OF DIRECTORS. The governing body of a district is a [the] board of five directors.

SECTION 25. Section 55.102, Water Code, is amended to read as follows:

Sec. 55.102. QUALIFICATIONS OF DIRECTORS. To be qualified for election as a director, a person must be a resident of the state, own land subject to taxation in the district, and be at least 18 ~~[more than 21]~~ years of age at the time of the election. Section 49.052 does not apply to a district governed by this chapter whose principal purpose is providing water for irrigation.

SECTION 26. Section 55.721, Water Code, is amended to read as follows:

Sec. 55.721. EXCLUSION OF NONAGRICULTURAL AND NONIRRIGABLE LAND FROM DISTRICT. Land located in the district which is classified as nonagricultural and nonirrigable may be excluded from the district in the manner provided in Subchapter J, Chapter 49 ~~[Sections 51.702-51.713 of this code]~~.

SECTION 27. Section 56.064, Water Code, is amended to read as follows:

Sec. 56.064. ELECTION OF DIRECTORS. (a) On petition of a majority of the real property taxpayers of a district requesting an election of district directors, the commissioners court shall immediately order an election to be held at the earliest legal time. The election shall be held as other elections under Chapter 49 ~~[this chapter]~~.

(b) ~~[The commissioners court shall declare the three persons receiving the highest number of votes elected, and if two or more persons tie for the third highest vote, the commissioners court shall elect the third director from those tying for the place.~~

~~[(c) On qualifying for office, directors elected under this section are the legal and rightful directors of the district within the full meaning and purpose of this law.~~

~~[(d) The first elected directors of the district hold office until the next regular directors' election, and subsequent directors of the district are elected every four years except as provided by Subsection (c) of this section.~~

~~[(e)]~~ The first elected directors of the districts in Calhoun, Matagorda, and Victoria Counties hold office until May 15 of the next succeeding odd-numbered year. Subsequent directors of the district are elected every two years on the first Saturday in May in each odd-numbered year, for a term of two years beginning on May 15 following the election.

SECTION 28. Section 57.053, Water Code, is amended to read as follows:

Sec. 57.053. TERM OF OFFICE, REMOVAL, AND SUCCESSION.

(a) ~~[Each director shall hold office for a period of two years and until his successor is appointed and has qualified.~~

~~[(b)]~~ A vacancy on the board shall be filled by majority vote of the commissioners court ~~[of jurisdiction]~~, and the court shall appoint directors so that the board will always have full membership.

~~[(b) [(c)]]~~ The commissioners court ~~[of jurisdiction]~~, by majority vote, may remove an appointed ~~[a]~~ member of the board.

SECTION 29. Section 57.060, Water Code, is amended to read as follows:

Sec. 57.060. PETITION. Before an election is held under Section 57.057 ~~[of this code]~~, a petition, signed by at least 100 ~~[25]~~ electors in the district ~~[each county commissioners precinct]~~ who are qualified to vote ~~[at an election for directors if a countywide election, or by 50 electors if less than countywide]~~, shall be presented to the district ~~[county judge]~~ requesting that an election be held in the district to determine whether or not directors for the district should be elected and, if so, to elect directors to serve until the next regular director election ~~[for state and county officers]~~. The petition shall include the name of one or more nominees for each director's position.

SECTION 30. Section 57.061, Water Code, is amended to read as follows:

Sec. 57.061. PROCEDURE FOR ELECTION. ~~[(a)]~~ After the petition is presented under Section 57.060 ~~[of this code]~~, the board ~~[county judge]~~ shall order an election ~~[to determine the propositions presented in the petition. The election shall be held not less than 30 days from the date of the order calling the election, or the propositions may be determined at a general election].~~

~~[(b) The election order shall designate the polling places which shall be the same as the polling places used in the last general election in the county, if a countywide election is held.~~

~~[(c) The county clerk shall issue notice of the election and shall have the notice published in a newspaper of general circulation in the county once a week for two consecutive weeks. The first publication must be not less than 14 days before the day of the election.~~

~~[(d) The sheriff shall post a copy of the notice at least 20 days before the day of the election at each polling place designated in the election order.~~

~~[(e) The district shall pay all expenses incident to calling and holding the election.]~~

SECTION 31. Section 57.207, Water Code, is amended to read as follows:

Sec. 57.207. DECLARING RESULT OF ELECTION. ~~[(a) Immediately after an election under this chapter, the officials holding the election shall return the result to the commissioners court of jurisdiction:~~

~~[(b) The election officials shall return the ballot boxes to the clerk of the commissioners court of jurisdiction, who shall safely keep the boxes and deliver them with the returns of the election to the commissioners court of jurisdiction at its next regular or special session.~~

~~[(c) The commissioners court of jurisdiction at its first session after the election shall canvass the vote and the returns. If the proposition submitted has been approved by a majority of the electors of the district voting at the election, the commissioners court of jurisdiction shall declare the result in favor of the proposition, but if the proposition is not approved by the electors of the district, the commissioners court of jurisdiction shall declare the result to be against the proposition.~~

~~[(d)] The board [commissioners court of jurisdiction] shall enter an order declaring the election result in its minutes.~~

SECTION 32. Section 58.072, Water Code, is amended to read as follows:

Sec. 58.072. QUALIFICATIONS. To be qualified for election as a director, a person must be a resident of the state, be the owner of record of fee simple title to land in the district, ~~[and] be at least 18 years of age, and owe no delinquent taxes or assessments to the district. Section 49.052 does not apply to a district governed by this chapter.~~

SECTION 33. Subchapter A, Chapter 60, Water Code, is amended by adding Section 60.002 to read as follows:

Sec. 60.002. AUDIT. Subchapter G, Chapter 49, related to Audit of Districts, shall apply to districts governed by this chapter.

SECTION 34. Subchapter M, Chapter 60, Water Code, is amended by adding Section 60.350 to read as follows:

Sec. 60.350. BONDS. Section 49.181, related to the Authority of Commission Over Issuance of District Bonds, and Section 49.183, related to Bond Sales, shall apply to bonds supported by taxes and issued by districts governed by this chapter.

SECTION 35. Section 65.103, Water Code, is amended to read as follows:

Sec. 65.103. ELECTION OF DIRECTORS; TERMS OF OFFICE. (a) The persons receiving the highest number of votes at each election shall serve as directors of the district.

(b) The terms of the directors may run concurrently, or may be staggered, but in any event, the term of office of a director may not exceed three years.

(c) The method for determining the initial terms for each of the directors constituting the initial board shall be determined by the temporary directors, and the terms must be clearly stated on the ballot for the confirmation and directors' election. At subsequent elections in each following year in which there is an election, the election must be held on the same uniform election date as the confirmation and directors' election, and the terms of the directors being elected must be stated on the ballot.

~~[(d) The election of directors must be held in a district on one of the dates provided by Section 9b, Texas Election Code (Article 2.01b, Vernon's Texas Election Code).~~

~~[(e) The permanent directors may assign a position number to each director's office, and each director subsequently shall be elected by position and not at large.]~~

SECTION 36. Chapter 65, Water Code, is amended by adding Section 65.235 to read as follows:

Sec. 65.235. PROHIBITION ON ASSESSMENT OR COLLECTION OF TAXES. Section 49.107 does not apply to a district created under this chapter.

SECTION 37. Section 66.101, Water Code, is amended to read as follows:

Sec. 66.101. BOARD OF DIRECTORS. A district shall be governed by a board of directors composed of five members, who are elected as provided in Chapter 49 ~~[by this chapter]~~.

SECTION 38. Section 66.310(b), Water Code, is amended to read as follows:

(b) Bonds issued by a district and projects and improvements of the district that are provided through the issuance of bonds are governed by Chapter 49 ~~[Sections 54.516 and 54.517 of this code]~~.

SECTION 39. Chapter 50, Water Code, is repealed, except that Subchapter H is continued in effect for the sole purpose of the administration and operation of contracts created or issued under those laws.

SECTION 40. The following sections of Chapter 51, Water Code, are repealed: Sections 51.033, 51.034, 51.073-51.074, 51.077-51.084, 51.0851, 51.087-51.089, 51.091-51.101, 51.122-51.124, 51.126, 51.131, 51.132, 51.136-51.138, 51.140-51.146, 51.149, 51.183, 51.191-51.193, 51.221-51.224, 51.231-51.279, 51.354-51.363, 51.371-51.374, 51.412, 51.416-51.418, 51.421, 51.422, 51.4321, 51.4371, 51.691-51.701, 51.714-51.731, and 51.737-51.747.

SECTION 41. The following sections of Chapter 52, Water Code, are repealed: Sections 52.104, 52.107-52.114, 52.116-52.118, 52.119-52.121, 52.157, 52.251-52.253, 52.259-52.262, and 52.297.

SECTION 42. The following sections of Chapter 53, Water Code, are repealed: Sections 53.020, 53.022, 53.023, 53.025-53.028, 53.035-53.039, 53.064, 53.065, 53.067-53.070, 53.0721, 53.076, 53.077, 53.084-53.087, 53.089, 53.090, 53.105, 53.106, 53.108-53.111, 53.114, 53.117-53.120, 53.123-53.125, 53.141-53.144, 53.147, 53.148, 53.173-53.175, 53.1791, 53.197, 53.198, and 53.231-53.273.

SECTION 43. The following sections of Chapter 54, Water Code, are repealed: Sections 54.026-54.029, 54.103-54.126, 54.202, 54.204, 54.209-54.233, 54.301-54.312, 54.506, 54.507(a), 54.509, 54.5121, 54.513, 54.516, 54.517, 54.519, 54.701-54.727.

SECTION 44. The following sections of Chapter 55, Water Code, are repealed: Sections 55.030, 55.033-55.036, 55.052, 55.104-55.106, 55.109, 55.111-55.116, 55.118-55.128, 55.162, 55.164, 55.168-55.184, 55.189-55.191, 55.199, 55.203, 55.252, 55.291-55.304, 55.331, 55.423-55.430, 55.451, 55.453, 55.492-55.496, 55.503, 55.506, 55.711-55.720, and 55.722-55.749.

SECTION 45. The following sections of Chapter 56, Water Code, are repealed: Sections 56.027-56.031, 56.062, 56.063, 56.065-56.068, 56.076-56.081, 56.083, 56.113, 56.114, 56.119, 56.129-56.134, 56.136, 56.138, 56.139, 56.183, 56.184, 56.2045, and 56.714-56.725.

SECTION 46. The following sections of Chapter 57, Water Code, are repealed: Sections 57.052, 57.054-57.056, 57.062-57.070, 57.095-57.099, 57.106, 57.107, 57.109, 57.110, 57.112-57.115, 57.119, 57.120, 57.171-57.174, 57.178, 57.202-57.206, 57.2075, 57.209-57.211, and 57.276-57.278.

SECTION 47. The following sections of Chapter 58, Water Code, are repealed: Sections 58.033, 58.034, 58.073, 58.074-58.083, 58.085-58.088, 58.090-58.100, 58.123, 58.124, 58.131, 58.132, 58.135, 58.139-58.149, 58.151, 58.152, 58.169, 58.179, 58.187-58.189, 58.221-58.224, 58.261, 58.317, 58.354-58.362, 58.442, 58.451, 58.452, 58.601, 58.691-58.701, and 58.714-58.725.

SECTION 48. The following sections of Chapter 65, Water Code, are repealed: Sections 65.024-65.029, 65.104-65.122, 65.202, 65.204, 65.209-65.234, 65.301, 65.401-65.409, 65.509, 65.512, 65.514, and 65.701-65.722.

SECTION 49. The following sections of Chapter 66, Water Code, are repealed: Sections 66.022-66.029, 66.103-66.117, 66.119, 66.120, 66.203-66.205, 66.208-66.215, 66.301, 66.302, 66.305-66.309, 66.312, and 66.323.

SECTION 50. (a) This Act takes effect as provided by this section.

(b) Section 49.103(b), Water Code, shall govern all elections held after December 31, 1995. Directors elected at any election held between January 1, 1992, and April 30, 1992, shall serve until the January 1996 election. Directors elected at any election held between May 1, 1992, and December 31, 1992, shall serve until the May 1996 election. Directors elected at any election held between January 1, 1993, and April 30, 1993, shall serve until the January 1996 election. Directors elected at any election held between May 1, 1993, and July 31, 1993, shall serve until

the May 1996 election. Directors elected at any election held between August 1, 1993, and December 31, 1993, shall serve until the May 1998 election. Directors elected at any election held between January 1, 1994, and April 30, 1994, shall serve until the January 1998 election. Directors elected at any election held between May 1, 1994, and December 31, 1994, shall serve until the May 1998 election. Directors elected at any election held between January 1, 1995, and April 30, 1995, shall serve until the January 1998 election. Directors elected at any election held between May 1, 1995, and July 31, 1995, shall serve until the May 1998 election. Directors elected at any election held between August 1, 1995, and December 31, 1995, shall serve until the May 1998 election. Directors whose terms expire prior to the election date set by this section shall continue to serve until their successors have been elected and qualified.

(c) All other provisions of this Act take effect September 1, 1995.

SECTION 51. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 815

Senator Cain submitted the following Conference Committee Report:

Austin, Texas
May 12, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 815** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

CAIN
BIVINS
MONTFORD
SHAPIRO
BARRIENTOS

On the part of the Senate

GOOLSBY
JUNELL
S. TURNER
OGDEN
RANGEL

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1127**

Senator Henderson submitted the following Conference Committee Report:

Austin, Texas
May 22, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1127** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

HENDERSON
HARRIS
GALLEGOS
BROWN
LUCIO

HAMRIC
ROMO
HOLZHEAUSER
HOWARD
HEFLIN

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

MEMORIAL RESOLUTIONS

S.R. 1139 - By Zaffirini: In memory of Emma Huerta of Hebbronville.

S.R. 1142 - By Barrientos, Armbrister: In memory of Erle Childress "Dick" Weekley of Dripping Springs.

H.C.R. 200 - (Luna): In memory of former State Representative Lou Nelle Sutton of San Antonio.

H.C.R. 219 - (Turner): In memory of Seferino Cabrera Romo of Chappell Hill.

CONGRATULATORY RESOLUTIONS

S.R. 1141 - By Nixon: Commending Karen Gregory of Nacogdoches for graduating summa cum laude from Stephen F. Austin State University.

S.R. 1144 - By Madla: Congratulating Roxanne Arcos of San Antonio for winning the gold medal in the girls 15-16 age group at the Texas Time Trial State Championships.

S.R. 1145 - By Madla: Congratulating Billy Limones of San Antonio for winning the gold medal in the 13-14 age group in the Texas Time Trial State Championships.

S.R. 1146 - By Madla: Congratulating Justin King of San Antonio for winning the gold medal in the boys 10-12 age group in the Texas Time Trial State Championships.

ADJOURNMENT

On motion of Senator Truan, the Senate at 1:38 a.m. adjourned until 10:00 a.m. today.

APPENDIX

REPORTS OF STANDING COMMITTEES

The following committee reports were received by the Secretary of the Senate:

May 22, 1995

STATE AFFAIRS — H.B. 3199, H.B. 391, H.B. 1922, H.B. 1976, H.B. 1375, H.B. 127, H.B. 3028, H.B. 2845, H.B. 2584, H.B. 2540, H.B. 2490, H.B. 2382, H.B. 2032, H.B. 1924, H.B. 1359, H.B. 175, H.B. 1547 (Amended), H.B. 3031 (Amended), H.B. 3164 (Amended), C.S.H.B. 2383, C.S.H.B. 1305

ECONOMIC DEVELOPMENT — H.B. 2936 (Amended), H.B. 2803, H.B. 2793, H.B. 2529, H.B. 2527, H.B. 2517, H.B. 2358, H.B. 1991, H.B. 1987, H.B. 1736, H.B. 1637, H.B. 1472, H.B. 1281, H.B. 1243 (Amended), H.B. 1233, H.B. 1086, H.B. 1031, H.B. 1030, H.B. 1029 (Amended), H.B. 1028, H.B. 1027, H.B. 354, C.S.H.B. 1487, C.S.H.B. 1020, C.S.H.B. 2766

CRIMINAL JUSTICE — H.B. 1687 (Amended), H.B. 40 (Amended), H.B. 3197, H.B. 2614, H.B. 2226, H.B. 2949, H.B. 2951, H.B. 43, H.B. 1079, H.B. 269, H.B. 2035, H.B. 1652, H.B. 120, H.B. 330, H.B. 179, H.B. 253, H.B. 2662, H.B. 3017, H.B. 1275, H.B. 1180, H.B. 1650, C.S.H.B. 93, C.S.H.B. 1379, C.S.H.B. 594, C.S.H.B. 576

HEALTH AND HUMAN SERVICES — H.B. 359, C.S.H.B. 2377, C.S.H.B. 1662

SIGNED BY GOVERNOR

(May 19, 1995)

S.B. 409 (Effective September 1, 1995)
S.B. 415 (Effective September 1, 1995)
S.B. 717 (Effective August 28, 1995)
S.B. 770 (Effective August 28, 1995)
S.B. 771 (Effective immediately)
S.B. 779 (Effective immediately)
S.B. 833 (Effective July 1, 1995)
S.B. 927 (Effective August 28, 1995)
S.B. 1125 (Effective immediately)
S.B. 1126 (Effective immediately)

S.B. 1154 (Effective September 1, 1995)
S.B. 1236 (Effective immediately)
S.B. 1633 (Effective immediately)
H.B. 356 (Effective August 28, 1995)
H.B. 596 (Effective October 1, 1995)
H.B. 1155 (Effective immediately)
H.B. 1493 (Effective August 28, 1995)
H.B. 1743 (Effective August 28, 1995)
H.C.R. 204

SENT TO SECRETARY OF STATE

(May 22, 1995)

S.J.R. 36
H.J.R. 50

SENT TO GOVERNOR

(May 22, 1995)

S.B. 604
S.B. 605
S.B. 641
S.B. 750
S.B. 882
S.B. 1150
S.B. 1198

SEVENTY-SEVENTH DAY

(Tuesday, May 23, 1995)

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

A quorum was announced present.

The Reverend Larry Covington, St. Louis Catholic Church, Austin, offered the invocation as follows:

Almighty God, we place ourselves before You as servants of Your people, charged with the great responsibility of causing and preserving the common good. We thank You for the great State of Texas and the blessings You have bestowed upon it and her citizens. We acknowledge our need for wisdom and council to